United States Court of Appeals

for the Second Circuit

APPENDIX

74-2189

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

JOHN WINSTON ONO LENNON,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

----------X

No. 74-2189

PETITION FOR REVIEW OF DEPORTATION ORDER

APPENDIX

LEON WILDES
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UNITED STATES COURT OF APPEALS
FEB 28 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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A P P E N D I X

List of Contents

	Page
Petition for Review of Deportation Order, 74-2189	1
Excerpt, Legislative History	15
21 U.S.C.A. Section 176 a	17
INS letter dated March 1, 1972, requiring departure within fifteen days	18
INS letter dated March 6, 1972, revoking fifteen day extension	19
Order to Show Cause dated March 6, 1972	20
"Superceding" Order to Show Cause dated March 7, 1972	22
Motion to Cancel Deportation Proceedings dated March 15, 1972	25
Leon Wildes letter dated March 24, 1972, supplementing Motion to cancel	28
INS letter dated April 24, 1972, denying motion to cancel	31
Leon Wildes letter dated May 1, 1972, requesting information from INS	32
Demand pursuant to 5 U.S.C. Section 552	33
Leon Wiles letter dated June 5, 1972, repeating request for information	35

Page

INS letter dated June 14, 1972, offering use of public reading room 37

Transcript of Deportation Hearing held on March 16, 1972..... 38

Transcript of Deportating Hearing continued on April 18, 1972 48

Transcript of Deportation Hearing, continued on May 12, 1972 63

Transcript of Deportation Hearing, continued on May 17, 1972 123

Cover letter, Stipulation and List of Errata with respect to transcript 165

Polden, Bishop & Gale letter dated March 14, 1972, explaining guilty plea 174

Telegram from Attorney Polden re guilt of Detective Sergeant Pilcher of perjury 176

Jon Hendricks Affidavit dated May 11, 1972, with attachments regarding National Committee for John and Yoko 177

Waiver of ineligibility for nonimmigrant visa, John Lennon, dated August 11, 1971 201

Immigrant Visa, Yoko Ono, dated August 31, 1964 202

Notice of Approval of Third Preference Petition for John Winston Lennon 203

Notice of Approval of Third Preference Petition for Yoko Ono Lennon 204

L. Grinspoon, Marihuana Reconsidered 205

Memorandum of a Conviction, Marlebone Magistrates' Court, November 28, 1968 213

Page

Hon. Morris E. Lasker's Order to Show Cause enjoining INS from deportation hearing until ruling on third preference applications is made, dated May 1, 1972 214

Motion to Take Testimony of Government Witness dated June 27, 1972 217

Immigration Judge's Denial of Subpoenas, dated June 28, 1972 220

British Dangerous Drugs Act, 1965 221

Form N-585, Application for Search of Records relating to case of Matter of Gray 242

INS General Counsel's withdrawal of Appeal in Matter of Gray 243

In the Matter of Basil F. Gray, Oral Decision of Immigration Judge dated September 23, 1971 244

Decision of Immigration Judge, In the Matter of John Winston Ono Lennon and Yoko Ono Lennon, dated March 23, 1973 251

Notice of Appeal to Board of Immigration Appeals with Rider Attached 298

Supplement to motion re issue of prejudgment 302

Leon Wildes letter dated October 23, 1973 requesting 60 days continuance of oral argument 306

BIA Chairman's Memorandum for the File dated October 23, 1973 307

Page

Appellant Attorney Appleman Memo For File dated October 23, 1973 and October 24, 1973 309

BIA Chairman's Memo for File dated October 26, 1973 311

Further Memo from BIA Chairman dated October 26, 1973 313

Excerpts from Oral Argument Before The BIA, heard on October 31, 1973 requesting action be deferred pending court litigation, etc. 314

Decision & Order of BIA dated July 10, 1974 334

Leon Wildes letter dated November 16, 1973 including Polden telegram, advising BIA that service of process has been completed in U.S. District Court suits 366

Complaint, S.D.N.Y., in action Lennon v. U.S.A. et al, ... 368

Exhibits to Complaint:

Motion to Secure Affirmance or Denial of Occurrence of Unlawful Act 385

Immigration Judge's Reply to Motion 387

Supplement to Motion dated September 20, 1973 388

Supervisor Memo re Supervision of Activities of both John and Yoko Lennon 391

Opinion and Order of Hon. Richard Owen in Lennon v. U.S.A. et al, dated January 2, 1975 392

British Rehabilitation of Offenders Act of 1974 402

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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JOHN WINSTON ONO LENNON,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

----------x

No. 74-2189

PETITION FOR REVIEW OF DEPORTATION ORDER

JOHN WINSTON ONO LENNON, the above-named petitioner, hereby seeks review by this Court, pursuant to 8U.S.C. 1105 (a), of an order of deportation issued against him on March 23, 1973, and affirmed administratively on July 10, 1974; and petitioner seeks an order declaring inter alia that said deportation order is null and void for errors of law and for unfairness in procedure.

THE DEPORTATION ORDER AND APPEAL THEREFROM

1. On July 10, 1974, the Board of Immigration Appeals (the Board) entered an order which effectively affirmed the decision of the Immigration Judge Ira Fieldsteel handed

down on March 23, 1973 (the Fieldsteel Decision).

2. The Fieldsteel Decision dealt with both the petitioner and his wife, Yoko Ono Lennon, resolving the latter's application for adjustment of status in her favor to that of a permanent resident of the United States, denying comparable relief to petitioner, and further ordering that in lieu of an order of deportation, petitioner be granted permission to depart voluntarily on or before sixty days from the date "this decision becomes final or any extension beyond such date as may be granted by the District Director."

3. On March 1, 1972, petitioner and his wife were advised that failure to effect their voluntary departure from the United States by March 15, 1972, would result in the institution of deportation proceedings.

4. As of March 6, 1972, deportation proceedings were initiated against petitioner and his wife.

5. With respect to this unprecedented and improper revocation of petitioner's privilege of voluntary departure on the part of the District Director for the New York District, Immigration Judge Fieldsteel said:

> "The record before me does not reflect by what means the District Director acquired the understanding that the respondents had no intention of effecting their departure by March 15, 1972, but he might well have reached such a conclusion from the submission on March 3, 1972, of petitions to have the respondents recognized as entitled to a third preference under their respective quotas, a step

which is normally taken as a preliminary to requesting permanent residence in the United States or through the medium of an application under Section 245 of the Immigration and Nationality Act. In any event the conclusion by the District Director that the respondents did not have the intention of leaving the United States on or before March 15, 1972, appeared to have been a correct one in the light of testimony by Mr. Lennon at page 24 of the record that he had no intention either way prior to March 15, 1972, that he and his wife were looking for her child and that they had not made up their mind either way about it but that they had no exact intention of departing. Furthermore, as of the date of their testimony on May 12, 1972, they were still unable to make up their minds, and stated that if an opportunity were given to them to depart perhaps within the next five or ten days they would not be willing to depart because they still did not know where the child was.

In view of this testimony, although the Immigration and Naturalization Service may have been somewhat precipitous in issuing the Order to Show Cause and beginning deportation proceedings on March 6, 1972, simultaneously with the revocation of the previously authorized permission to remain until March 15, 1972, I cannot see that the respondents were harmed since they were neither prevented from leaving pursuant to that original authorization, nor were they prevented from leaving voluntarily at any subsequent date. Technically speaking the Order to Show Cause would have been more accurate to state that they remained in the United States after March 6, 1972, without authority since that was the date on which their privilege of voluntary departure was revoked, but in the light of their continuing unwillingness to depart from the United States even as late as May 12, 1972, I find that the respondents are deportable under Section 241 (a)(2) of the Immigration and Nationality Act as aliens who after admission as nonimmigrants remained in the United States for a longer time than permitted." Fieldsteel Decision, at pp. 2-3.

6. The Immigration Judge expressly noted that "the human equities of the situation are apparent," stated:

> "It lies within the power of the enforcement authorities of the Immigration and Naturalization Service to defer Mr. Lennon's departure from the United States if it could be demonstrated that such postponement is justified by the circumstances." Fieldsteel Decision at p. 45.

7. On appeal to the Board, petitioner unsuccessfully brought a motion to defer the Board's decision pending the outcome of two court actions filed in the United States District Court for the Southern District of New York. These district court actions, as will more fully appear hereinbelow, involve certain basic claims by the petitioner, unresolved to date, and still pending.

8. Petitioner's motion to defer was grounded on the threefold contention that (1) the District Director abused his discretion by instituting deportation proceedings in the circumstances regarding this "nonpriority" case;* (2) petitioner was the object of unlawful and illegal wiretaps and electronic surveillance resulting in the unfavorable and prejudicial determinations made herein by the Immigration and Naturalization Service (the Service) and in derogation of certain of petitioner's fundamental rights under the Constitution of the United States;** and (3) that petitioner's case had

---

*"Nonpriority" cases are those involving deportable aliens where the government, for humanitarian or other reasons, chooses not to proceed with deportation proceedings or not to execute a deportation order.

** The most obvious constitutional violations relate to the First, Fourth and Fifth Amendments to the Court.

been prejudged by the Service.

9. The Board stated:

> "Our function is not to review the District Director's judgment in instituting deportation proceedings, but to determine whether the deportation charge is sustained by the requisite evidence. Since the information regarding "nonpriority" cases related to a matter beyond our scope of inquiry, we see no reason to defer our decision pending the outcome of Court litigation....." Board's Decision at p. 5.

10. The Board also stated:

> "It is unclear exactly how much evidence of surveillance must be presented for a party to show that he or she is 'aggrieved' within the meaning of (18U.S.C.) Section 3504 (a)(1). .....However, it is not necessary for us to reach that issue.
>
> In the present case, all counsel has presented is a photocopy of an undated memorandum indicating that some unknown party wished the (petitioner) to be placed under surveillance.... We need more information than has been presented * to warrant a remand for further hearing before the Immigration Judge.
>
> Moreover, the thrust of the material offered seems to be in the direction of showing that someone improperly influenced the District Director to institute deportation proceedings. As we have already stated, this is a matter outside the scope of our jurisdiction." Board's Decision at p. 6.

11. The Board further stated that, as far as petitioner's contention of prejudgment was concerned,

> "Determinations relating to the District Director's decision to institute deportation proceedings are not germane to our function.
>
> We are not required to delay deportation proceedings to allow the (petitioner) to pursue collateral remedies in the courts." Board's Decision at p. 9.

---

*Petitioner is prepared to furnish more such information and is currently stayed from pre-trial discovery aimed precisely at still further evidence of this nature.

Significantly the Board continued:

> "The ends of justice are best served by insisting upon a speedy resolution of the administrative deportation proceedings. Should the collateral challenge remain undecided upon the conclusion of the deportation proceedings, the alien could then apply to the District Director for a stay of deportation pending the outcome of his other litigation, and he could seek review of a denial of such a stay in the federal courts. This approach should afford an opportunity for any respondent with a meritorious claim to preserve his rights, while not providing an extra measure of delay for those who in reality seek nothing more. We must therefore deny the respondent's motion that we defer our decision." Ibid. (Emphasis added).

FACTUAL BACKGROUND

12. Petitioner is a resident of this judicial circuit.

13. On November 28, 1968, petitioner pleaded guilty, before a British Magistrate, to having "in his possession a dangerous drug to wit cannabis resin, without being duly authorized," contrary to the Dangerous Drug Act of 1965. The resulting penalty was the imposition of a small fine. The statute in question defined "cannabis resin" in reference to "separated resin" (hashish). Another term, "cannabis," on the other hand, was defined in reference to the "flowering or fruiting tops" (marijuana) of the plant.

14. In furtherance of one primary purpose of petitioner's trip to the United States, he and his wife appeared in custody proceedings with respect to petitioner's wife's

eight year old child by a previous marriage. These proceedings were commenced by the child's father and required the appearance of petitioner and his wife on a number of occasions. An order was entered granting petitioner's wife custody of the child. The child's father thereupon removed the child to Texas, where none of the parties had previously resided, and commenced custody proceedings there. Petitioner and his wife were obliged to appear there as well and once more succeeded in securing an order in their favor, which decreed

> "that Defendant, YOKO ONO LENNON is hereby GRANTED temporary custody, solely and exclusively, of the minor child KYOKO COX and that such custody may be exercised at any place within the territorial limits of the United States of America...the said Plaintiff ANTHONY D. COX is hereby ORDERED forthwith to deliver said child, KYOKO COX to Defendant, YOKO ONO LENNON, or any representative authorized by her."

Once again, the child's father absconded with the child. Petitioner and his wife have not as yet been able to secure physical custody of the child, despite their continued efforts and despite the subsequent entry of a final custody order in their favor.

15. At various times during the deportation proceedings had herein, petitioner filed motions to cancel and stay such proceedings. These motions were all meritorious and predicated upon claims which include the following:

a. petitioner's wife, then a respondent in the deportation proceedings, was fully qualified for residence, had filed an approvable third preference

petition as an outstanding artist, and should have been permitted, under applicable regulations and internal operations instructions, to apply for permanent residence in normal course without the institution of deportation proceedings;

b. the proceedings were in all events premature in that petitioner was awaiting the outcome of legal actions and pending legislation in England which might result in the complete expungement of his conviction thus rendering the proceedings here moot;**

c. petitioner and his wife were the parents, as defined in the Immigration and Nationality Act, of a child who was a citizen of the United States whose legal custody was in active litigation in judicial proceedings in two jurisdictions of the United States and that the deportation proceedings threatened to remove petitioner from jurisdiction of the Court and

---

*A third preference classification is accorded to aliens who, because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States. 8U.S.C. 1153(a)(3). Both petitioner and his wife were eventually granted such status.

**During the course of preparing this petition, petitioner's counsel received on September 5, 1974, information via trans-atlantic telephonic communication that indicates the passage of the Uniform Rehabilitation of Offenders Act in England, retroactively applicable, which appears to expunge petitioner's prior conviction based on his guilty plea. Further information as well as a copy of the legislation are expected to reach counsel shortly. Counsel welcomes the opportunity to bring such material to the Court's attention when it becomes available.

to frustrate the order of the Court;

d. in view of the unique internationally-acclaimed talents of petitioner, whose presence in the United States was adjudicated by respondent to be substantially beneficial to the cultural and economic interests of the nation, deportation proceedings were not in the public interest;

e. the proceedings constituted a grave hardship and tended to disrupt and separate a family and to impede the continued search for the child in derogation of Court orders as to the child's custody;

f. the commencement of these proceedings was discriminatory and violative of established practices and policies of the respondent not to commence proceedings to deport in these circumstances.

All such motions were denied by respondent.

16. During the course of the administrative proceedings brought against him, plaintiff was compelled to commence three separate federal actions against the defendants, all in the U.S. District Court for the Southern District of New York.

a. The first action (Lennon v. Marks, 72 Civ. 1784), was an action in mandamus to compel the respondent's New York District Director of the Immigration Service to rule (either favorably or unfavorably) on petitioner's application for third preference classification as an outstanding artist. The action resulted

in granting the application, after the Court, per Lasker, J., entered an order temporarily restraining the deportation proceedings pending a hearing on the motion before the District Court. The application was approved within one hour of the scheduled hearing before the Court without any argument. That action included a complaint and affidavit alleging that the petitioner's application had been kept in a secret vault for a period of 60 days without adjudication pursuant to respondent's instructions.

b. A second federal action was commenced in October 1973 (Le[illegible]. Richardson, 73 Civ. 4476) in which petitioner, under the Freedom of Information Act, 5U.S.C. 552 et seq., sought disclosure of the criteria used by the Immigration Service in determining which cases should be classified as "non-priority" cases. This action was necessitated because the respondent had refused for more than one year to disclose such criteria. This second action has resulted in some disclosure by the government, after urging by the District Court, Owen, J., of the previously unpublished Operations Instruction as to how the Service treats cases similar to the petitioner's. From the results thus far it can be ascertained that there are included cases in which discretionary relief was exercised with less than compelling reasons therefor. There are a substantial

number of cases of persons with convictions involving hard drugs, and in which the aliens had multiple convictions, including murder, rape, impairing the morals of children, and heavy drug trafficking. Further information concerning the procedures employed in classifying cases as non-priority and other related records have been requested in the action; and, if forthcoming, will conclude the proceedings in this case.

c. Finally, the petitioner, in attempting to prove his claim that the respondent has not only prejudged his immigration case, but seeks to evict him from the United States for totally improper reasons, commenced a third action. Lennon v. The United States of America; Robert H. Bork, et al, 73 Civ. 4543, presently before Judge Owen. This action, in brief summary, contains three causes of action:

(1) the first seeks to compel the government, pursuant to 18U.S.C. 3504, to affirm or deny the occurrence of a variety of unlawful acts, including unlawful surveillance, which gave rise to the deportation proceeding;

(2) the second alleges prejudgment of the deportation proceedings through undue and improper influence by certain government officials;

(3) the third, based on violations of constitutional rights, alleges that the government has not permitted

the respondent to exercise its normal discretion, and that this interference has violated the due process and other constitutional rights of the plaintiff; other constitutional issues involve the infringement of petitioner's rights under the First, Fourth, and Fifth Amendments to the Constitution of the United States.

17. The current status of the latter action is reflected by an order of Judge Owen directing defendants to submit moving papers in support of their "contemplated" motion to dismiss "no later than September 26, 1974, with a return date no later than October 11, 1974." This order, filed on September 3, 1974, also stayed the taking of all depositions until decision on the said motion to dismiss.

18. It is respectfully brought to this Court's attention that the order by Judge Lasker as well as the complaints in both the actions pending before Judge Owen have been made part of the administrative record in this matter, and are therefore available for this Court's consideration, and were equally accessible during the administrative determination herein.

19. It is respectfully submitted that a review of the full record in this case will clearly show that the order of deportation issued against the petitioner is fatally defective for errors of law and for unfairness in procedure, because, inter alia:

a. petitioner's deportation should never have been required because he unquestionably qualified for non-priority classification;

b. the handling of this case, including the prosecution and maintenance of the deportation proceedings by the respondent, were the result of an improper, discriminatory, and unlawful course of conduct designed to remove petitioner from this country in violation of his rights under the laws and Constitution of the United States;

c. petitioner should not have been held deportable for lack of clear, convincing and unequivoval evidence of deportability;

d. the course of conduct engaged in by respondent resulted in the denial of rights secured to petitioner by the Constitution of the United States; and

e. petitioner should have been granted adjustment of his status to that of a permanent resident because he was not ineligible thereto as a matter of law.

WHEREFORE, petitioner respectfully prays for an order:

a. declaring that the deportation order issued against him is null and void and contrary to law;

b. restraining respondent from apprehending,

detaining or deporting petitioner;

c. directing respondent to enter an order terminating the proceedings against petitioner;

d. granting petitioner status as a permanent resident or directing respondent to enter such an order;

e. deferring final disposition of this matter pending the resolution on the merits of the actions in the District Court;

f. remanding to the Immigration Judge to determine the effect of the passage of the Uniform Rehabilitation of Offenders Act, in England, as it may effect these proceedings and may render moot the grounds upon which the denial of petitioner's adjustment of status was based; and in effect thereby granting to petitioner the relief he is seeking and to which he is entitled;

g. declaring the administrative procedure had herein to have been in violation of petitioner's constitutional rights and declaring unconstitutional the statutes under which such procedure was brought;

h. for such other and further relief as may be appropriate and as is just and proper.

LEON WILDES
Attorney for Petitioner
515 Madison Avenue
New York, New York 10022
(212) 753-3468

LEGISLATIVE HISTORY

The advisability of extension of the 1957 law was the subject of considerable debate not only in the Congress but in the legislative bodies of several States as well as in the public and the specialized press.

Many instances of abuse of the provisions of the 1957 law have been reliably reported and well documented. The contention was that certain intermediaries have made a lucrative business by acting as representatives of American couples desiring to adopt an alien orphan. Irrespective of the legal and moral questions involved, it became evident that some of the practices which crept into the alien orphans adoption program created considerable hardship for the children and have not served well the interest of the adoptive parents.

Upon the expiration of the 1957 law, Congress, instead of reenacting the expired 1957 law with an extension of the termination date wrote into the law certain procedural requirements under which the Attorney General must make a finding of eligibility after a full investigation has been made similar to the investigation made pursuant to section 205 of the Immigration and Nationality Act in the case of a natural-born alien child of a U. S. citizen.

Since September 9, 1959, the enactment date of the amended statute, until January 1, 1960, the Attorney General has approved 23 petitions filed in behalf of alien children personally adopted abroad by U. S. citizens, while 57 petitions were approved in cases of children coming to the United States for adoption, and 130 petitions were approved in cases where adoption took place by the use of an authorized representative of the adoptive parents (proxy). Twenty-five petitions were denied by the Attorney General. A total of 176 alien orphans were admitted into the United States.

At the present time, the Committee on the Judiciary is engaged in a study of the whole problem and, until such study is completed and further inquiries as to the advisability of a continuation of the alien orphans adoption program are made, the committee is not prepared to recommend an extension of the program beyond 1 year. Section 7 of the joint resolution, as amended, achieves that purpose.

ADJUSTMENTS IN THE IMMIGRATION AND NATIONALITY ACT

Sections 212(a) (23) and 241(a) (11) of the Immigration and Nationality Act set forth the grounds for the exclusion or deportation from the United States of aliens convicted of narcotic law violations. Those provisions of the law were amended by section 301 of the Narcotic Control Act of 1956 (act of July 18, 1956; 70 Stat. 567, 575) at which time language was added to both above-cited provisions of the Immigration and Nationality Act for the purpose of making conviction of a violation of law relating to illicit possession of narcotic drugs an offense resulting in the exclusion or deportation of an alien.

In 1958, in proceedings for judicial review of deportation orders affecting two aliens, Mexican nationals, the plaintiffs urged that their conviction under the law of California for possession of marihuana did not render them deportable under section 241(a) (11) of the Immigration and Nationality Act. Both aliens claimed that marihuana was not included in the term "narcotic drugs" as it appears in the first clause of the above-

Appendix B

(1)

cited paragraph. The plaintiffs' contentions were upheld by the U.S. District Court for the Southern District of California in Mendoza-Rivera v. Del Guercio (161 F.Supp. 473); and Rojas-Gutierrez v. Hoy (161 F.Supp. 448).

On April 3, 1959, the Court of Appeals for the Ninth Circuit affirmed the decision of the lower court holding that the aliens were not deportable (267 F.2d 451; 267 F.2d 490). Briefly, the court held that because of the construction of the first clause of section 241(a) (11), supra, an alien was not subject to deportation merely because he had been found guilty "of simple possession of marihuana." In Mendoza-Rivera, the court of appeals expressed the opinion that if there had been any attention directed to the consequences the alien was "exactly the type person the Members of Congress who voted for the act would have desired deported," but that there was insufficient legislative history to establish that intent. The court further observed that the alien was obtaining an "unexpected and surprising windfall, if he is not deported." It might be observed here that the plaintiff Rojas-Gutierrez was convicted on three occasions, in 1938, in 1945, and in 1949, for the crime of possessing marihuana in violation of the California Health and Safety Code.

The amendments proposed herein are designed to overcome the effect of the above-outlined judicial decisions so that a person who has been convicted at any time of a violation of a law relating to the illicit possession of marihuana shall be subject to exclusion or deportation as if the violation was for possession of "narcotic drugs." Both amendments will bring the opening clause of the two pertinent provisions of the law in line with other clauses thereof which specify marihuana in the enumeration of the various types of drugs which bring the statute now into play in special circumstances. The instant proposal carries out, and is fully in line with the original intent of Congress expressed in several enactments clearly indicating that its concern with violations of laws relating to marihuana was as great as its concern with violations of laws relating to other narcotic drugs. Usually, violations of laws relating to marihuana are but the forerunners of violations of other laws relating to dangerous and more addiction-forming narcotics. The ease with which marihuana can be obtained is undoubtedly one of the leading causes of the increased incidence of juvenile delinquency and it stresses the urgent necessity for the enactment of this legislation. These changes are contained in sections 8 and 9 of the joint resolution, as amended.

Section 10 of the joint resolution is designed to amend section 245(a) of the Immigration and Nationality Act, as amended by the act of August 21, 1958 (72 Stat. 699).

In recommending the enactment of the amendatory act of August 21, 1958, the Committee on the Judiciary made the following statement of policy (Rept. 2133, 85th Cong.):

> Provision for the adjustment of immigration status in the United States, without institution of deportation proceedings, to that of permanent residents in behalf of aliens who came to the United States as nonimmigrants, was first enacted into law in section 245 of the Immigration and Nationality Act. At that time the conferees in their report on the legislation which became the

edge of and used due diligence to prevent the presence of the narcotic drug in or on such vessel, water craft, railroad car, or other vehicle; but the narcotic drug shall be seized, forfeited, and disposed of as provided in the second paragraph of section 173 of this title. Feb. 9, 1909, c. 100, § 2(g), 35 Stat. 614; Jan. 17, 1914, c. 9, 38 Stat. 275; May 26, 1922, c. 202, § 1, 42 Stat. 596; June 7, 1924, c. 352, 43 Stat. 657.

Historical Note

Codification. For derivation of this section, see notes under section 173 of this title.

Cross References

Advance of funds in connection with enforcement of this section, see section 529a of Title 31, Money and Finance.

§ 176a. Smuggling of marihuana; penalties; evidence; definition of marihuana

Notwithstanding any other provision of law, whoever, knowingly, with intent to defraud the United States, imports or brings into the United States marihuana contrary to law, or smuggles or clandestinely introduces into the United States marihuana which should have been invoiced, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such marihuana after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or whoever conspires to do any of the foregoing acts shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned for not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this subsection, the defendant is shown to have or to have had the marihuana in his possession, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury.

As used in this section, the term "marihuana" has the meaning given to such term by section 4761 of the Internal Revenue Code of 1954.

For provision relating to sentencing, probation, etc., see section 7237(d) of the Internal Revenue Code of 1954 Feb. 9, 1909, c. 100, § 2(h), as added July 18, 1956, c. 629, Title I, § 106, 70 Stat. 570.

A7 597 321
A9 489 154

March 1, 1972

Mr. John W. Lennon
and Mrs. Yoko Ono Lennon
105 Bank Street
New York, N. Y.

Dear Mr. and Mrs. Lennon:

The records of this Service indicate that your temporary stay in the United States as visitors has expired on February 29, 1972.

It is expected you will effect your departure from the United States on or before March 15, 1972. Failure to do so will result in the institution of deportation proceedings.

Please notify this Service of the date, place and manner of your departure at least two days in advance of your leaving by calling Mr. Orville R. Conley at 264-5896.

Very truly yours,

SOL MARKS
District Director
New York District

(4)

A17 597 321
A19 489 154

March 6, 1972

Mr. John Lennon and
Mrs. Yoko Ono Lennon
105 Bank Street
New York, New York

Dear Mr. & Mrs. Lennon:

Your temporary stay in the United States as visitors expired on February 29, 1972.

On March 1, 1972, we advised you in writing that you were expected to effect your departure from the United States on or before March 15, 1972. It is now understood that you have no intention of effecting your departure by that date. We are therefore revoking the privilege of voluntary departure as provided by existing regulations (Title 8, Code of Federal Regulations 242.5(c)).

Very truly yours,

SOL MARKS
District Director
New York District

cc: Leon Wildes, Esq.
515 Madison Ave.
New York, N.Y. 10022

VEB:mn

(S)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of)
)
LENNON, John Winston)
Respondent.)

To: John Winston Lennon (name) File No. A17 597 321

105 Bank Street, New York, New York
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Great Britain and a citizen of United Kingdom & Colonies;
3. You entered the United States at New York, New York on or about August 13, 1971 (date)
4. At that time you were admitted as a nonimmigrant visitor for pleasure and were authorized to remain in the United States until February 29, 1972.
5. You remained in the United States after February 29, 1972 without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a) (15) of said act you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at 20 Vesey Street, New York, N. Y. - 14th floor on March 16, 1972 at 8:45 a.m., and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: March 6, 1972

IMMIGRATION AND NATURALIZATION SERVICE

Sol Marks
(Signature and title of issuing officer)
DISTRICT DIRECTOR
NEW YORK DISTRICT
(City and state)

Form I-221
(Rev. 3-30-67)

Bond Review Yes ☐ No ☑
T.A. Assigned Yes ☑ No ☐

(over)

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

When you appear you may, if you wish, admit that the allegations contained in the Order to Show Cause are true and that you are deportable from the United States on the charges set forth therein. Such admission may constitute a waiver of any further hearing as to your deportability. If you do not admit that the allegations and charges are true, you will be given reasonable opportunity to present evidence on your own behalf, to examine the Government's evidence, and to cross-examine any witnesses presented by the Government.

You may apply at the hearing for voluntary departure in lieu of deportation. Moreover, if you appear to be eligible to acquire lawful permanent resident status the special inquiry office will explain this to you at the hearing and give you an opportunity to apply.

You will be asked during the hearing to select a country to which you choose to be deported in the event that your deportation is required by law. The special inquiry officer will also notify you concerning any other country or countries to which your deportation may be directed pursuant to law; and upon receipt of this information, you will have an opportunity to apply during the hearing for temporary withholding of deportation if you believe you would be subject to persecution in any such country on account of race, religion, or political opinion.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration and Naturalization Service without further notice, or in a determination being made by the special inquiry officer in your absence.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

(signature of respondent)

Before:

(signature and title of witnessing officer)

(date)

CERTIFICATE OF SERVICE

This order and notice were served by me on 7/12/62 (date) in the following manner:

by personal service (English language)

Delivered copy of OSC to Security Officer Walter Brustman of 105 Barclay St. NYC.

Interpreter —

Frank E Benson

(signature and title of employee or officer)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of) (SUPERSEDING)
LENNON, JOHN WINSTON (also known as))
))
Respondent.)

To: John Winston Lennon (also known as) File No. A 17 597 321
(name)

105 Bank Street, New York, New York
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Great Britain and a citizen of United Kingdom and Colonies;
3. You entered the United States at New York, New York on or about August 13, 1971
(date)

See Continuation Sheet attached hereto and made a part hereof.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

See Continuation Sheet attached hereto and made a part hereof.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at 20 West Broadway, New York, New York 14th. Floor on March 16, 1972 at 8:45 am, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: March 7, 1972

IMMIGRATION AND NATURALIZATION SERVICE

Earl Hamilton
(signature and title of issuing officer)
DISTRICT DIRECTOR
NEW YORK DISTRICT
(City and state)

Form I-221 (Rev. 3-30-67) Bond Review Yes ☐ No ☑
I.A. Assigned Yes ☑ No ☐

(over)

"CONTINUATION SHEET"

IN THE MATTER OF | March 7, 1972

LENNON, JOHN WINSTON | A7 17 597 321

4. At that time you were admitted as a nonimmigrant visitor for pleasure and were authorized to remain in the United States until February 29, 1972.

5. On March 1, 1972 you were granted the privilege of departing the United States voluntarily on or before March 15, 1972.

6. You abandoned your intention to depart from the United States on or before March 15, 1972.

7. On March 6, 1972 the privilege of voluntary departure to March 15, 1972 was revoked.

8. You remained in the United States after February 29, 1972 without authority.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(9) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Section 101(a)(15) of said Act, you have failed to comply with the conditions of such status.

Section 241(a)(2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Sec. 101(a)(15) of said act you have remained in the United States for a longer time than permitted.

NOTICE TO RESPONDENT.

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

When you appear you may, if you wish, admit that the allegations contained in the Order to Show Cause are true and that you are deportable from the United States on the charges set forth therein. Such admission may constitute a waiver of any further hearing as to your deportability. If you do not admit that the allegations and charges are true, you will be given reasonable opportunity to present evidence on your own behalf, to examine the Government's evidence, and to cross-examine any witnesses presented by the Government.

You may apply at the hearing for voluntary departure in lieu of deportation. Moreover, if you appear to be eligible to acquire lawful permanent resident status the special inquiry office will explain this to you at the hearing and give you an opportunity to apply.

You will be asked during the hearing to select a country to which you choose to be deported in the event that your deportation is required by law. The special inquiry officer will also notify you concerning any other country or countries to which your deportation may be directed pursuant to law; and upon receipt of this information, you will have an opportunity to apply during the hearing for temporary withholding of deportation if you believe you would be subject to persecution in any such country on account of race, religion, or political opinion.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration and Naturalization Service without further notice, or in a determination being made by the special inquiry officer in your absence.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

_____
(signature of respondent)

Before: _____

_____ (signature and title of witnessing officer)

_____ (date)

CERTIFICATE OF SERVICE

This order and notice were served by me on March 7, 1972 (date) in the following manner:

by personal service (ENGLISH) language. A copy of OSC was personally served upon Sabeeh Sabbagh, Esq., Wilde, 515 Madison and by Capt. Cedyn of OSC was served on Miss Sarah Segal of Sabbagh Wilde 105 Bank St NYC.

Interpreter

Irene E. Peterson
(signature and title of employee or officer)

Cross Examination

March 15, 1972

Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Re: LENNON, John A17 597 321
LENNON, Yoko A19 489 154

Attn: Hon. Sol Marks, District Director

MOTION TO CANCEL DEPORTATION PROCEEDINGS

This motion is respectfully made to the District Director, Acting District Director, or Deputy District Director, to cancel the Order to show cause in the above-captioned proceedings or, in the alternative, to terminate proceedings thereunder, under the authority of 8C.F.R.242.7. The said section of law authorizes the cancellation of deportation proceedings or the termination of proceedings under an Order to show cause which has been served, upon a showing that the proceeding was improvidently begun.

It is respectfully submitted that these proceedings were improvidently begun in view of the long standing practice of the Immigration and Naturalization Service to accord the beneficiaries of third preference petitions deferred departure status pending their eligibility to obtain permanent residence in administrative proceedings. The respondents in these deportation proceedings are the beneficiaries of third preference petitions which were duly filed on March 3, 1972, and which will presumably be approved in due course. The female respondent is completely eligible for adjustment of her status to that of a permanent resident of the United States under Section 245 of the Immigration and Nationality Act, as amended, 8U.S.C. 1255, there presently being available visa numbers under both the third preference priority and the nonpreference priority of the visa allocation list attributable to Japan, the female's

respondent's place of birth. The male respondent is also presumably eligible to adjust his status to that of a permanent resident of the United States with the single exception that he secure the expungement of his conviction of drug possession, there being available visas under the nonpreference and third preference portions of the visa allocation list of England, the male respondent's birthplace. Upon information and belief, such a proceeding is being commenced by counsel in England at this time and evidence of the commencement of such proceedings will be attached to this motion if it is available.

Moreover, these respondents are the parents of a child, as defined under Section 101(b)(1) of the Immigration and Nationality Act, U.S.C. 1101(b)(1) and have been granted the legal custody of that child in judicial proceedings in two jurisdictions in the United States by court order, a copy of which is attached and made a part of this motion, awarding custody of the infant child to the respondents and limiting such custody to the jurisdictional area of the United States. The child's natural father has, upon information and belief, hidden the child in violation of the said court orders and the removal of the respondents will prevent the reunion of this family and frustrate the court orders referred to.

The respondents are artists of unique talents, internationally acclaimed, whose presence in the United States will substantially benefit the cultural and economic interests of the nation.

The institution of deportation proceedings rests within the discretion of the District Director who has authority to withhold deportation proceedings completely as to deportable aliens, as well as authority to cancel or terminate proceedings where they have already been begun. This jurisdiction continues until a hearing is actually had in the deportation proceedings, and is without prejudice to either party. 8C.F.R.242.7. It is respectfully submitted that the continuation of these pro-

ceedings may have the effect of separating a family, contrary to the general and intent of the Immigration and Nationality Act; that it will frustrate the terms of the court orders granting the respondents custody of their infant child; that it may, in view of the beneficial cultural effect to the United States, be contrary to the best interests of the nation; that it would contravene the established practice of enabling the beneficiaries of third preference petitions to remain without the institution of deportation proceedings pending the completion of their administrative applications for residence and abuse of discretion and therefore constitute the improvident commencement of proceedings. It is further respectfully submitted that the termination of these proceedings, being without prejudice to the government, would in no way harm the government, while causing extreme hardship to the respondents and possible damage to our national interests.

WHEREFORE, respondents respectfully request that these proceedings be terminated by the District Director, Acting District Director, or Deputy District Director, as having been improvidently begun.

Respectfully submitted,

LEON WILDES, ESQ.,
Attorney for respondents,
515 Madison Avenue
New York, New York 10022

LW/ns
Enclosures

LEON WILDES
ATTORNEY AT LAW
515 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 753-3468

STEVEN L. WEINBERG

CABLE ADDRESS
"LEONWILDES," N.Y.

March 24, 1972

Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Re: LENNON, John A17 597 321
LENNON, Yoko A19 489 154

Attn: Hon. Sol Marks, District Director

Dear Sir:

As you know, the Special Inquiry Officer has adjourned the deportation proceedings in the above entitled actions to April 18, 1972 based upon our application for such adjournment. The primary basis for the adjournment was the pendency of the motion made to you to cancel deportation proceedings, dated March 15, 1972. I submit herewith additional evidence and argument to be considered by you in support of the motion to cancel deportation proceedings.

The alleged basis for commencing these proceedings was the apparent ineligibility of Mr. Lennon to adjust his status under Section 245 of the Immigration and Nationality Act, as amended. This ineligibility is grounded upon the existence of a narcotics' conviction for which the law presently provides no administrative waiver. I submit herewith evidence to show that Mr. Lennon is presumptively eligible for adjustment of status in the form of a letter from his British counsel showing that he has been instructed to make an application to seek a judicial expungement of the conviction (erroneously referred to as a sentence) of Mr. Lennon. It is respectfully submitted that this evidence negates the claimed basis for requiring the institution of deportation proceedings in these cases. It is further noted that the Immigration Service has not been consistent in its application of the rule, which is being applied to Mr. Lennon in a discriminatory manner. It is further noted

that the rule being applied by the Immigration Service in failing to accord Mr. Lennon the benefit of the deferred departure arrangements made for beneficiaries of pending or approved third preference petitions is to be found nowhere in the law or published regulations of the Immigration and Naturalization Service and that its application is not only discriminatory but unlawful.

Furthermore, even assuming the correctness of the policy, its application to Mr. Lennon's case is improper in that he is also the derivative beneficiary of his wife's third preference petition and since she is presumably eligible to adjust her status, the procedure should have been favorably exercised in Mr. Lennon's behalf.

With respect to the case of Mrs. Yoko Ono Lennon, there is no actual or claimed ground for ineligibility for adjustment of status to that of a permanent resident and the issuance of an order to show cause was therefore improvident. It was also contrary to the regulations, which prescribed that persons eligible to adjust be permitted to do so without resort to deportation proceedings. In view of the known and sympathetic elements concerning her desire to be with her American citizen child, the issuance of the order to show cause in her case is submittedly an abuse of discretion.

A further basis for the request to cancel these deportation proceedings is founded upon the fact that the applicants have requested additional time to complete the purpose for which they were originally admitted to the United States: to obtain the custody of their child Kyoko. Although a temporary custody order has been obtained and a copy of the order submitted with this motion, a permanent order has not yet been secured and further court appearances in Texas will be required for this special purpose. Likewise, the efforts to locate the child have not yet been met with success and will require further time. Accordingly, respondants have requested a further extension of their time and hereby reiterate that request, and submit herewith the letter of Alan Kahn, Esq. with respect to the legal proceedings and the period of time needed. The denial

of the request for additional time, whether as an extension of visitors' status or as a prolongation of deferred departure status is likewise submittedly an improper exercise of discretion, as is the purported revocation of the deferred departure originally granted to March 15, 1972 under these circumstances. In view of the fact that the aliens had continued temporary purpose in the United States for which they had originally been admitted and which was not yet completed, the denial of additional time and the revocation of time already granted were improper acts, rendering the issuance of the order to show cause improvident and submittedly improper.

WHEREFORE, respondents respectfully request that these proceedings be terminated by the District Director, Acting District Director, or Deputy District Director, as having been improvidently begun.

Respectfully submitted,

LEON WILDES, ESQ.
Attorney for respondents
515 Madison Avenue
New York, New York 10022

LW/ns

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
20 WEST BROADWAY
NEW YORK, NEW YORK 10007

April 24, 1972

A17 597 321
A19 489 154

Leon Wildes, Esq.
515 Madison Avenue
New York, New York

Re: John Lennon
Yoko Ono Lennon

Dear Mr. Wildes:

Your letter of March 15, 1972 contains the request that deportation proceedings relating to the above-named aliens be cancelled pursuant to the authority of 8 CFR 242.7.

The information you submitted as well as other relevant material has been carefully reviewed. You have been aware that it is the Government's position that the male respondent is not eligible to adjust his status to that of a permanent resident in view of his conviction in England. The arguments that you have presented both in your communications and at the deportation proceedings are not sufficiently persuasive in view of the male respondent's conviction and other circumstances in this case. Accordingly, your request is denied.

Of course, you have already been advised of this decision orally and this merely constitutes written confirmation of the decision already furnished to you.

Very truly yours,

Sol Marks

SOL MARKS
DISTRICT DIRECTOR
NEW YORK DISTRICT

Recd 4/26/72 NY

May 1, 1972

Sol Marks, District Director
Immigration & Naturalization Service
20 West Broadway
New York, N.Y. 10007

Dear Mr. Marks:

Pursuant to Title 5, U.S.C., Para. 552, the undersigned hereby demands that you make the attached information available to him forthwith. This information is an absolute necessity in connection with preparing defenses to the government's action against my clients, John Winston Ono Lennon and Yoko Ono Lennon.

In view of the fact that the Service has decided to press deportation proceedings against Mr. and Mrs. John Lennon, the undersigned hereby demands that you supply the answers to the attached questions in order for the Lennons to properly defend the deportation proceedings.

Very truly yours,

LEON WILDES

lw:rs

By hand

EXHIBIT 1

Pursuant to Title 5, U.S.C., §552, the undersigned hereby demands that you make the following information available forthwith to the undersigned:

(I) State the following separately, nationally and for the geographic area covered by the New York District Office of the Immigration and Naticnalization Service, for specific annual periods during each of the past (five) 5 years:

(a) The number of aliens apprehended who are statutorily excludible or deportable and a breakdown as to the grounds for thier deportability, and specifically governing, inter alia, excludibility under §212(a)(23) of the I.N.A., and deportability under I.N.A. §§241 (a)(2) and 241 (a)(9), and 241 (a)(11).

(b) For same time periods and geographic areas and with the same breakdown as to each ground for excludibility and deportability as in (I)(a) above, state:

(i) The number of such aliens in whose cases formal deportation proceedings were actually instituted;
(ii) The number of such cases in which proceedings were not instituted because of humanitarian reasons, including age, illness, close family realtionships, etc., stating the number under each separate category of humanitarian classification, including,but not limited to age, infirmity, relationship to U.S. citizen child, relationship to U.S. resident spouse, compelling national interest, pendency of third preference petitions or because aliens were professionals or members of the arts or sciences of third preference level;
(iii) The number of such cases administratively considered "non-priority" cases in each such category and for each such period; the specific criterion or standards for such classification, and the range of periods of time for which such classification exists.
(iv) The number of such cases in each category and for each such period for which proceedings were administratively deferred for temporary periods of time or delayed during the temporary pendency of such factors as are stated in I(b)(ii) above.
(v) The number of cases for each time period and geographic area specified in which the removal

of aliens was stayed during the pendency of private immigration legislation in the Congress and, with respect to any case not stayed, if any, the reasons specified for nondeferral of all such cases.

(c) State the standards applied for classification of a case as "non priority" or other classification by reason of which an alien statutorily deportable is

(i) not made the subject of deportation proceedings; or

(ii) if processed for deportaion, granted indefinite voluntary departure; or

(iii) extended periods of voluntary departure.

If separate standards exist for each such category, please state them; state whether they are embodied in written instructions, regulations, or operating manuals, and if so, furnish a copy of all such standards stating their respective effective dates and geographic jurisdictional areas of applicability.

Yours, etc.

LEON WILDES,
515 Madison Avenue
New York, N.Y. 10022
212-753-3468

Attorney for John Winston Ono Lennon
and Yoko Ono Lennon

LEON WILDES
ATTORNEY AT LAW
515 MADISON AVENUE
NEW YORK, NEW YORK 10022
—
(212) 753-3468

STEVEN L. WEINBERG

CABLE ADDRESS
"LEONWILDES," N.Y.

June 5, 1972

Hon. Sol Marks, District Director
Immigration and Naturalization Service
20 West Broadway
New York, N.Y. 10007

Re: LENNON, John Winston Ono
LENNON, Yoko Ono
A17 597 321
A19 489 154

Dear Mr. Marks:

As you know, I presented a request to you by hand on May 1, 1972 for certain information under the Freedom of Information Act, Title 5, U.S.C., Para. 552. No reply has been received with respect to this request.

On May 23, 1972, I telephoned and spoke with Mr. Vincent A. Schiano, the Trial Attorney in the above proceedings, who informed me that your office would not reply to the request made. My further request that the refusal to comply with my request be stated in writing was likewise refused.

Under the circumstances, and in view of the fact that over a month has passed since the presentation of my request, unless I receive your immediate communication to the contrary, I shall consider Mr. Schiano's reply to be the official policy of the New York District Office of the Immigration & Naturalization Service.

The refusal to comply with my request is prejudicial to my motion, made in the deportation proceedings in the above matters, to terminate the proceedings on the basis of discriminatory prosecution in these cases. As you know, the Special Inquiry Officer has granted me to July 1, 1972

within which to file my brief in support of my motion. Unless I receive the information requested, I will not be in a position to file the brief on time.

I respectfully appreciate your immediate attention to this request.

Very truly yours,

LEON WILDES

LW/ba
delivered by hand

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
20 WEST BROADWAY
NEW YORK, NEW YORK 10007

June 14, 1972

A17 597 321
A19 489 154

Leon Wildes
Attorney at Law
515 Madison Avenue
New York, New York 10022

Dear Sir:

Reference is made to your letters of May 1 and June 5, 1972, in which you demand that certain statistical data be made available to you pursuant to Title 5, U.S.C., Para. 552, for use in preparing your defense of clients in deportation proceedings.

You are advised that this office maintains a public reading room on the twelfth floor where the following materials are available for your use:

1. Copies of the Annual Reports of the Immigration and Naturalization Service for the years 1933 through 1971.
2. Administrative Decisions under the Immigration and Nationality Laws of the United States, with cumulative indices.
3. Unpublished Service and Board decisions relating to proceedings in which the initial decision was made in the New York District office.
4. Statements of policy, interpretations, and those manuals and instructions to staff (or portions thereof) affecting the public, with an accompanying index of any material issued after July 4, 1967.
5. Copies of Immigration and Nationality Laws, of Title 8 of the United States Code Annotated, Title 8 of the Code of Federal Regulations--Chapter I, and the Department of State Foreign Affairs Manual, Volume 9 - Visas.

You are invited to research these materials and to obtain copies of any of the statistical tables which you find useful. If you desire statistics which are not covered in the annual reports of the Service, you may communicate with the Statistical Branch, Central Office, Washington, D. C. to ascertain the availability and cost of special statistical tabulations. Any question concerning Service policy or instructions which are not within the purview of 8 C.F.R. 103.9 (d) must be addressed to the Central Office.

Sincerely,

Sol Marks

SOL MARKS
District Director
New York District

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

FILE 1) A17 597 321 - New York
2) A19 489 154 - " "

MATTER OF

1) John Winston Ono Lennon
2) Yoko Ono Lennon

Respondents

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Ira Fieldstool

Hearing held on March 16, 1972 at 20 West Broadway, New York, N. Y.

Recorded by Dictabolt Transcribed by Sylvia Katz

Official Interpreter None used Language English

IN BEHALF OF SERVICE:

Vincent A. Schiano, Esq.
Trial Attorney
New York, N. Y.
Station

IN BEHALF OF RESPONDENTS:

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y.

I hereby certify that to the best of my knowledge and belief the following pages numbered 1* through 21 are a complete and accurate transcript of the above-described hearing.

Ira Fieldstool
Signature
Special Inquiry Officer
Title
7/17/72
Date

* = corrected by stipulation

Form I-297
(Rev. 3-25-65)

GPO 924-456

SPECIAL INQUIRY OFFICER TO BOTH RESPONDENTS:

Q Do you speak and understand the English language, each of you?

A Yes. (by both)

Q And are those your full, true and correct names?

A Yes. (by both)

Q Madam is that yours, Yoko Ono Lennon?

A Yes sir.

Q Yours is John Winston Lennon?

A Yes sir. I did add Ono to my name in England, legally - I don't know what that means. My name is still Winston, because Ono Lennon -

Q Ono Lennon?

A I tried to Winston but they made me keep Winston as well.

Q All right, we'll add that.

A It's a legal name you know.

Q Was it by court order?

A The man came from the Civil Service Office -

Q But it was an official officer?

A Yes, yes.

SPECIAL INQUIRY OFFICER: Did you get copies of this order to show cause that I have before me. I see there are two actually - one was acknowledged did you get those counsel?

MR. WILDES: In behalf of my clients I will acknowledge service of the orders to show cause.

SPECIAL INQUIRY OFFICER: We are talking now basically about the superceding order to show cause issued March 7th?

MR. WILDES: That is correct.

SPECIAL INQUIRY OFFICER TO RESPONDENTS:

Q The purpose of this hearing is to decide whether you have to be deported from the United States. Do you understand?

A Yes. (by both)

Q You have to answer too, madam.

A Yes, I understand.

Q Are you represented by Mr. Wildes - is he your attorney?

A Yes. (by both)

Q All right. Will each of you please raise your right hand. Do you solemnly swear the testimony you will give today will be the truth, the whole truth and nothing but the truth, so help you God?

A I do. (by both)

SPECIAL INQUIRY OFFICER: Sit down. The order to show cause relating to Mrs. Lennon will be Exhibit #1, and the order to show cause relating to Mr. Lennon will be Exhibit #2. Mr. Wildes are you prepared to concede in behalf of your clients that the allegations of fact and the conclusion of law as to deportability are true and correct?

MR. WILDES: Mr. Special Inquiry Officer we have a specific request and application to be made at this time. I would like to file my notice of appearance as attorney in behalf of both of the respondents. My request is for an adjournment of these proceedings. If I may I should like to explain the basis for our -

SPECIAL INQUIRY OFFICER: Yes you may, go ahead.

MR. WILDES: The first basis is that I have filed an application with the District Director in the form of a motion requesting under the regulations that these proceedings be terminated and the order to show cause

be cancelled under the provision authorizing him to do so as when an order to show cause is improvidently issued. As the Special Inquiry Officer knows his jurisdiction to rule on that motion extends only during the period that he - prior to the commencement of this hearing in proceedings for deportation, so therefore my first request - the first basis that is for my request for an adjournment is so as not to moot that request. The basis for that request is that third preference petitions as outstanding artists have been filed on March 3, 1972 with the District Director and have not yet been adjudicated. It is a practice of the Immigration Service, although it appears to my knowledge nowhere in the regulations of the law to accord to the beneficiaries of third preference approved cases that are those who are likely to be approved. The privilege of deferred departure while they prepare applications for adjustment of status or if there are problems in their way while they are cleared the District Director has felt obliged not to invoke that beneficial practice in this particular case and we feel that has a deleterious effect upon the cultural interest of the United States, and since the interest of the United States is of the utmost issue in that determination, we have today filed such a motion. The second basis for the application and adjournment is the fact that it has been impossible in the short period of time to prepare defenses to the proceedings and the various types of applications on a discretionary basis which can be filed in this particular case. The respondents were originally given permission to remain by letter of the District Director until March 15th. He thereafter revoked that permission and issued an order to show cause returnable

March 16th, one day after that. He thereafter issued a superceding order to show cause in which he added allegations of fact and conclusions of law. Because of the fact that my clients have been involved in other litigation with respect to the custody of their child in the courts of Texas which have recently been successfully concluded in their behalf, some of their time was spent down there and a good deal of their time has also been spent in seeking out the whereabouts of this child whose natural father has apparently been hiding it, contrary to the order of the court. Under these circumstances and because of their obligations it became practically impossible for counsel to have sufficient time to prepare this case and to advise his clients.

SPECIAL INQUIRY OFFICER: Have you been representing them in the domestic problem?

MR. WILDES: No, I have not. They have other counsel.

SPECIAL INQUIRY OFFICER: That hasn't interfered with your preparation, has it?

MR. WILDES: No, it hasn't - except their absence from the states and their involvement in these very emotional type of proceedings has just left very little time to do much else.

SPECIAL INQUIRY OFFICER: Let me ask you counsel before you go any further. You realize of course, you know of course, that you could make the same application before me. In other words if the order to show cause was improvidently issued or wrongly issued I can terminate it as well as the District Director. Your application for permanent residence, if you are going to submit it can be submitted to me as well as to the District Director, and finally, and finally, what is it that you

are after? In other words if you are after, let's say, a matter of time, that you can get from me also - on the other hand, you know that if there is an application for permanent residence this is something which will drag for - I don't know - three, four or five months perhaps and I suspect that your clients are interested in going in and out of the United States. Their own interests require that kind of mobility. The pendency of that application will interfere with that mobility.

MR. WILDES: I appreciate that sir. The next consideration that I was confront to mention is relative there. There is an impediment, a legal impediment to the eventual application of the male respondent, Mr. Lennon, for adjustment of status under Section 245 of the Immigration and Nationality Act which would require an expungement of a conviction in England because of some recent development over there with respect to the police officers involved and because of the retention of local counsel in England. For the purpose of obtaining that expungement we feel that we need additional time within which to determine whether adjustment of status is the appropriate remedy and we want to be able to apply at a time so that not to break up a family unit. The fact that the child has just recently been granted to us - to my clients as in these custody proceedings and that they seek the whereabouts of the child and the order provides that they may not remove this child from the United States when they obtain custody, the fact that the female respondent is presently eligible for adjustment of status assuming the approval of the third preference petition or the issuance of a labor certification. The fact that the husband may not be [illegible].

complicate the issues very much and for an attorney who wants to render the proper advice in a case like this I simply feel that I need the additional time and I have been advised as late as yesterday by the counsel in England that in a period of two months he will have sufficient information either to provide us with an expungement or an opinion that it can or cannot be obtained in the courts of England. There are, with respect to an adjustment of status application, many witnesses we might want to submit in support of that application. Witnesses of notoriety who cannot simply come in at our request and it is for this reason as well that we would like to have an adjournment of the hearing in these proceedings. I have every confidence in that the same application can be made as indicated by the Special Inquiry Officer in these proceedings, but not wishing to fail to make any possible request to the District Director who has a prior kind of jurisdiction I have chosen to make the application initially to him, and I would not want as well for that question to be mooted.

SPECIAL INQUIRY OFFICER: Mr. Schiano.

MR. SCHIANO: I don't think that question becomes mooted. If the motion to the District Director was to be considered I am sure that the Trial Attorney was to request the hearing to be remanded to the District Director for purpose of cancellation -it would not be any legal obstacle. I don't think that is the problem in this case here, if there was such an expungement. As far as the other strikes are concerned counsel says he wants to wait for a successful conclusion. I don't know where we can go from there, that would be an indefinite type of request. Getting down to the more basic crux of the case, counsel,

on behalf of the respondent, does desire to file some application for adjustment - that is obvious. There are petitions for the respondents pending at the present time. The principle of - the whole WARP of the case is that this is definitely surrounding the conviction relating to the male respondent in England, and I believe that that is the conviction in 1968, and as to that expungement if that was to have any effect there would be no possibility of adjustment - there is no waiver for such a conviction of the marijuana statute.

SPECIAL INQUIRY OFFICER: WHAT KIND OF narcotic conviction?

MR. SCHIANO: Marijuana.

SPECIAL INQUIRY OFFICER: Well have you discussed with counsel exactly in what form that expungement was taken - in other words is there a provision, is there a procedure for expungement or would it be a reversal of a conviction or a DISMISSAL OF THE complaint, or what?

MR. WILDES: Counsel has indicated to me that after my advising him as to what would be required under our immigration law, that such a proceeding may be brought in England, that is at a common occurrence and he informed me of the fact that one of the grounds for it may be found in a recent investigation of the police official who, my client has reason to believe may have acted improperly with respect to the arrest. As a result of that and the fact that this was accomplished by a guilty plea, the client never having had, so to speak, his day in court, we believe and counsel in England believes that such a proceeding may be brought and that an ab initio expungement of the entire conviction may be obtained.

SPECIAL INQUIRY OFFICER: How was the entry - why did they waive -

MR. SCHIANO: Once the government accorded the male respondent a waiver under 212(d)(3) of the Act

MR. WILDES: Sir, I believe that the government's position is not in opposition to an adjournment of these proceedings, which I feel, as an attorney, is an absolute necessity.

SPECIAL INQUIRY OFFICER: I'm not questioning it, I am just trying to explore the area. Obviously the man was just served with an order to show cause a little over a week ago and if there are complex issues counsel is entitled to an adjournment. It is just a question of the length of time and for what purpose the adjournment will achieve.

MR. WILDES: I have been advised by counsel that it will take him eight weeks within which to advise me definitively of the proceedings in England - whether it is possible, whether it is now ready perhaps and has been accomplished and so forth. I asked him specifically how long it might take knowing that this question would be raised. It's for that reason that I ask an adjournment of eight weeks.

SPECIAL INQUIRY OFFICER: What's the government's position on the length of the adjournment?

MR. SCHIANO: There willbe NO OBJECTION TO two weeks. I do feel that we can accomplish the same purpose and go ahead with the proceedings upon the merits. These are PEOPLE WHO MAY BE ELIGIBLE FOR voluntary departure. The success or failure of the application in England IS CONJECTURAL If he should be successful NO CONCERN WHAT the LEGAL EFFECT of that decision would be. If it would appear favorable then the motion to reopen would be in order.

SPECIAL INQUIRY OFFICER: I think two weeks is sort of a short time - nothing can be resolved in two weeks. I think a month's adjournment might be

appropriate for all purposes for what counsel to pursue his request for TERMINATION BY THE DISTRICT DIRECTOR and see what progress - I can't believe, I can't believe that you can't get an answer from your corresponding counsel in England within a month. I think we'll adjourn it for a month. Tuesday, April 18th at 8:45 - all right counsel?

MR. WILDES: Yes, April 18th.

SPECIAL INQUIRY OFFICER: Hearing is adjourned.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF
1) John Winston Ono Lennon
2) Yoko Ono Lennon

Respondents

FILE 1) A17 557 321 - New York
2) A19 429 154 - " "

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Ira Fieldsteel

Hearing held on April 18, 1972 at 20 West Broadway, New York, N. Y.

Recorded by Dictabelt Transcribed by P. J. Killela

Official Interpreter none used Language English

IN BEHALF OF SERVICE:
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I hereby certify that to the best of my knowledge and belief the following pages numbered 1 through 14 are a complete and accurate transcript of the above-described hearing.

Signature
Special Inquiry Officer
Title
7/27/72
Date

Form I-297
(Rev. 3-25-65)

GPO 924-456

SIO TO BOTH RESPONDENTS:

Q Are you still represented by Mr. Wildes, is he still your attorney?

A (by male): Yes, sir.

SIO: Mr. Wildes, did you have some applications that you wished to make in this proceeding?

MR. WILDES: Yes, I do. The Special InquiryOfficer will recall that on March 15th, when we last appeared here, I had made a motion to the government, to the District Director to terminate these proceedings. As of this date I have received no formal determination, except that yesterday afternoon by telephone the District Director informed me that he would be denying our motion to terminate. I therefore respectfully request - I renew these motions before the Special Inquiry Officer today. The grounds to my motion are both technical and huminatarian. If Imay I should like to hand up a copy of the motion which I certify to be a copy of the papers filed with the District Director. Both the respondents, Mr. and Mrs. John Lennon arethe beneficiaries of third preference petitions filed on March 3, 1972 and presumably ap/provable. The practice of the Immigration Service since 1965 has been that in the case of presumably approvable or approved third preference petitions, for outstanding artists and professionals, the government accords them deferred departure privilege so that they might go about the usual task of apply-ing for residence in due course. Mrs. Lennon has absolutely no legal impediment whatsoever in her application, and the institution of those proceedings in her case are doings which are certainly improvident and possibly a severe abuse of discretion. As the Special Inquiry Officer may be aware the operations instructions the nonpublished Inspector's Handbook provides and I quote: That an otherwise eligible alien who has not heretofore filed a Section 215 application shall

normally be afforded an opportunity to file such an application prior to the institution of deportation proceedings. This is the uniform practice of the Immigration Service and it was departed from in this case. The government claims that it is commencing this proceeding because the respondents are ineligible, for residence. It is our contention, first of all, that Mr. Lennon who has a conviction in England for possession of narcotics, is not statutorily ineligible. I base this contention upon the reading of Section 212(a)(23) which does not in my opinion disqualify Mr. Lennon for applying for residence. That Section provides that possession must be either illicit possession, or possession for a certain purpose. And the statute is very clear and explicit in stating that it is for the purpose of the manufacture, production, compounding, etcetera, meaning to traffic in narcotics rather than possession presumably for one's own use. In the case of Varga v. Rosenberg, the California Federal Court held that an alien who has been convicted under California statute of being under the influence of narcotics was not deportable under this provision, and the court noted, and I quote: That while Congress undoubtedly intended to close every possible loophole where a person had been convicted of crime relating to the possession of narcotics, the legislative history indicates that the committee's aim was to eliminate traffic in narcotics as distinguished from use. In the alternative, if the government believes that Mr. Lennon's narcotics conviction is a bar to his residence, we have filed - we have commenced - a proceeding in the English court to obtain a judicial expungement of that conviction...

SIO: When you say comment a proceeding, are you using that in a technical sense, or do you mean you have asked a lawyer to look into it?

MR. WILDES: We have asked a lawyer to look into it....

SIO: Go ahead.

MR. WILDES: And a letter from the attorney is attached to the motion papers. If the government believes that this expungement is necessary, and there is evidence that the respondent is proceeding to obtain such a decree, we believe that the institution of deportation proceedings is at the very least premature. Aside from being the beneficiaries of their own third preference petitions, each of these respondents is the derivative beneficiary of the others. Thus, if the failure to apply the deferred departure rule to Mr. Lennon might not be considered by the Special Inquiry Officer as an abuse of discretion in itself it is such in this casebecause Mrs. Lennon is entitled to the deferred departure privilege, and a denial of relief in her husband's case has the effect of separating the family, a result which is abhorrent to the immigration law. Mrs. Lennon is the mother of a young child, Keyoko, who is a citizen of the United States. Technically this places both Mr. Lennon and Mrs. Lennon as parents of an American citizen child as that term is defined in the Immigration Act in Section 101(b)(1). The basic purpose underlying the Act is the reunion of families. A temporary custody order - a copy of which has been submitted in support of the motion - has been entered in Texas granting the parents the custody of the child and finding this to be in the best interest of the child. These parents have spent a great deal of time and agony intrying to secure and finally secure INC temporary custody orders with respect to the child only to find that the child was spirited away by the natural father. We have reason to believe that the child health and education are being adversely affected by these circumstances and that these proceedings can effectively deny them the company of that child. The temporary custody....

SIO: I don/t quite understand the logic of that . I am allowing you to say it, but I don't understand what you are saying. Are you saying that the fact she cannot discover the child is due to the Immigration Service, is that what you are saying?

MR. WILDES: No, I am saying that the fact that she may not be here long enough in order to discover that child and to execute the order of the court, is directly within the area of these proceedings. The thrust of these pro - ceedings would be to frustrate and impugn the order of the Texas court. That court specifically took testimony and found the Lennons to be fit parents. Ordered the natural father to deliver the child to them and gave the respondents temporary custody to be exercised only within the jurisdiction of - juris- dictional limits - of the United States. The pendancy of these deportation proceedings therefore in itself constitutes a hardship to my clients. These parents have undergone and continue to undergo great mental anguish and tor- ture. First in locating their child, then in obtaining his custody and now having the paper which would be meaningless without finding the child. Will it be then that the father simply intends to wait out his time until they are removed from the United States in order that he can continue his illegal custody of the child. A party to these proceedings, which perhaps are only represented today by the press and that is the public. The artistic talents of the Lennons are well known- world known. John and Yoko's talents appear perhaps on more records than any other singers in the history of music. And these proceedings tend to deny the American public particularly its youth and its artistic community of the artistic interplay of their personal pres- ence in this country imports. It is our claim therefore that the proceedings here are not in the public interest and constitute a severe hardship to these respondents and should be terminated. These respondents have been spending

a great deal of their time in matters which are of great importance to the American community. As recently as two or three days ago they were appointed by an executive assistant to President Nixon to participate in a national anti-drug media effort. As recently as yesterday they were appointed to the faculty of New York's University to speak in behalf of the college and at least one other institution, I haven't had an opportunity to digest. The contribution of the Lennos themselves while here in the United States to the international effort in Bangledesh have exceeded in value the contributions of the United States government to the U. N. for that purpose. I have the impression that we stand on the threshhold of making and repeating our error in the Charlie Chaplin case. Whether deportation proceedings are instituted continued or prosecuted or whether they are terminated is completely discretionary, and that discretion is to be exercised in the public interest. It is well known that every day the Immigration authorities in this building exercise their authority to terminate and withhold deportation proceedings on humanitarian grounds. In the cases of minor children, in the cases of persons seriously ill, in cases where third preference petitions are pending, and in a host of other areas. The District Director labels the case non priority after exercising his discretion and no proceedings are begun. That is the normal every day handling of cases in the impartial atmosphere of the Immigration Service. That normal every day attendance to a case has not been followed in this case. We believe therefore that the institution of proceedings in this case has been discriminatory in that on information and belief that other aliens likewise considered statutorily ineligible for residence are granted extended periods of time and deportation proceedings are not instituted in their cases. There is one further

and equally fundamental ground for this motion to terminate, and that is that the very institution of the proceedings is in our opinion solely for the purpose of restraining protected first amendment rights. The Leanons have expressed their views publicly in the United States with respect to United States policies - particulary with respect to our involvement in Vietnam. These proceedings are deliberately an effort to silence the expression of serious dispassionate and sincerely held opinions that happen to differ with those of some of the officials of our government. What is occuring is akin to what has happened in Mandel v. Mitchell, where the Federal Court observed that it was an abuse of discretion when discretionary relief was denied solely on exhhange of first amentment rights. That case also hold that the American public, the American citizenry had a right to hear which is constitutionally protected. Nothing is more pernicious or destructive of our entire system of law than when the public has a feeling that the law is a tool whereby those in power can harass those who threaten or oppose them with otherwise lawful means. Nor is there anything more anthithetical to due process of law. The unfair application of the law is just as serious an offense as the passage of a law which is discriminatory on its face. There was no reason in the world requiring the government to commence deportation proceedings or to refuse to grant additional time to the parents of this child whose custody they had sought and whose whereabouts is still unknown to them. It is in our opinion a cruel misapplication of the law to permit to stand proceedings to deport the parents of a child under these circumstances. In our opinion what exists here is a frivolous discriminatory action which appears to be punishment meted out to still two courageous voices of sincere dissent.

SIO: Counsel, is it your contention that because people have certain first amendment rights and expressed them that they are permitted to remain in the United States in violation of the immigration laws?

MR. WILDES: Absolutely not.

SIO: That would seem to be your position?

MR. WILDES: It certainly is not.

SIO: Let me say this. You are perfectly well aware of my function. I have a judicial function which is connected with the adjudication of cases which are presented to me. It is true that the District Director may have the authority to initiate or not initiate proceedings. This is up to the District Director, and of course, ultimately up to the Attorney General of the United States. The government has seen fit to institute the proceedings. I have nothing to do with the institution of the proceedings. You have formally presented to the District Director and to the government - the question whether or not the proceedings were perhaps erroneously or improvidently instituted. They have apparently made such a decision, is that right Mr. Schiano, the District Director has decided ~~not~~ to go forward with the order to show cause?

MR. SCHIANO: If I may, restricting ourselves solely to that small part of counsel's statement, constituting legal argument in this case - there is nothing, he says, would destroy of the government to in stitute the proceedings. There is nothing unless counsel's suggesting take ~~our~~ stock of the arts, the culture or other segment of our society which exempts the respondents from the proceedings themselves. If everything which counsel says concerning the various claims he makes in every case would support the advisability of such; a proceeding, then all the issues postulated by counsel can be disposed of.

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I find no restriction on the government's authority to begin proceedings and to prosecute them. There is no application presently pending before the probeedings, there has been no request made to separate the proceedings or to sever them.

SIO: All right, let's get down to that, Counsel. These proceedings were begun inMarch. You were last before me on March 16th. At that time you indicated that you wanted to apply for p rmanent residence in behalf of both of these individuals. Are you prepared to submit the application today?

MR. WILDES: I am not prepared to submit them today, Mr. Special Inquiry Officer. I know our motion was made to the District Director on March 15th and although the third preference petitions have been ~~approved~~ PENDING since March third. As I indicated previously the oral determination of my motion only came by telephone yesterday, and under these circumstances I would respectfully request that the Special Inquiry Officer take our request with respect to the termination of these proceedings or any of them under advisement and that he grant our motion. However if you determineto deny our motion in whole or in part I would ask that he render a decision and reschedule these deportation proceedings for a period at least three weeks ahead to afford us an opportunity to prepare for the proceedings, and to arrange for any witnesses we might wish to bring in to testify.

SIO: Let me ask one preliminary question. Is the third preference petition necessary in these cases?

MR. WILDES: It's a question whether its approval is necessary?

SIO: Is approval necessary?

MR. WILDES: We need a labor certification, the approval of the Secretary of Labor under the law or an exemption.

SIO: Are they going to engage in labor in the United States?

MR. WILDES: Well, if they are exempted and of course this is up to the District Director again, these petitions could have been approved as the standard in this kind of case when the Labor Department need not be consulted within the normal one month period. We still have no adjudication.

SIO: Now, let me ask you this further question. Do these two applications necessarily stand or fall together?

MR. WILDES: My motion to terminate these proceedings may be considered by the Special Inquiry Officer with respect to both applications or with respect to....

SIO: No, no, I am not asking you about the application to terminate, I'm asking about the applications for permanent residence. In other words, I am asking you - let's suppose that Mr. Lennon is statutorily ineligible because of the conviction, will Mrs. Lennon abandon her application, or does she want to continue with her application?

MR. WILDES: That is a question which I would have to consult with them and discuss very very carefully, in view of the fact that such a situation would probably place her inthe position of having to choose between her child and her husband. I think that the very thought of such a possibility is disturbing and it would require careful consultation.

SIO: Well I don't quite see why that conclusion is necessary. In other words, if she has permanent residence, he has had a waiver in the past to come as a visitor, and he stays here an appreciable length of time as a visitor. I am sure that Mrs. Lennon proposes to visit England and other countries of the world with him. It doesn't sound like the inevitable separation.

MR. WILDES: We have reason to believe that - further waivers would not be

granted in their case.

SIO: That I could understand that you would have basis for that.

MR. WILDES: In the past waivers have been granted only for a limited period usually a month at a time, and I feel a great deal of effort have resulted in certain extensions, but it has been very difficult to secure that type of waiver.

SIO: To come back to your application for termination of proceedings. I do not consider it within my power to terminate as improvidently drawn. This is up to the District Director and to the Immigration Service. If the Immigration Service has seen fit not to withdraw, that's up to the Immigration Service. The proceeding is properly pending before me. If it should develop inthe course of the deportation hearing that the charge in the order to show cause is not sustained then of course it is properly before me for termination. But your application in that respect is denied. Now, with regard to the applications, can you give me any reason why it should take you two weeks to proffer that application?

MR. WILDES: Well before conceding to that if I may. Is it the Special Inquiry Officer's position that he does not have authority to terminate a proceeding before him?

SIO: No, that was not what I said. I said I had no authority to terminate on the grounds the order to show cause was improvidently issued. That's a function of the District Director.

MR. WILDES: Yes. My motion is made on the broader ground and under your general authority under the regulations that you have the authority of course to make any necessary order with respect to the processing of the case.

SIO: I don't consider it necessary to terminate the proceedings before I find out what the facts are, Counsel. All right, lets' get back to

the two weeks. Why do you require two weeks to prepare the application?

MR. WILDES: Because I believe that it would be advisable for my client to appear wit witnesses, and some of these witnesses....

SIO: Witnesses who would testify to what?

MR. WILDES: Witnesses to testify as you know the application for adjustment of status is a discretionary application left to the Special Inquiry Officer's discretion. I would want witnesses who would testify to the applicant or applicants' as the case may be are properly persons who should be permanent residents of the United States.

SIO: Counsel, your problem is that even if we resume inthree weeks, you will not know at that point, at that precise point,what the issues are. In other words, your witnesses can testify of course in advance that these are good people, but what are they going to testify with regard to Mr. Lennon if the ~~conjecture~~ CONVICTION is still standing.

MR. WILDES: I have the burden of proof in establishing any application that I file and I think it is perfectly proper presentation of the case to present witnesses. Although I know that it is not customary in deportation proceedings to bring a lot of witnesses, this is not an ordinary deportation proceeding and I believe that I want to leave no stone unturned in presenting a proper case.

SIO: And where are these witnesses coming from?

MR. WILDES: Well, it may be that a Member of the Parliament of England will be here. It may be that members of the Congress, that renowned artists who have known these people personally over the years, may be called upon. It is just impossible to call these people up and say be here Tuesday after noon at three o'clock, you have to give them notice and arrange for the Counsel

Appel of record, he is travelling to England to night and this is one of his functions.

SIO: Well, does the government have any position?

MR. SCHIANO: Yes, I believe Counsel is sufficiently aware when he states the problems in this case but he does not appear to be sufficiently prepared as he should have been to present the applications. No matter who he brings in from no matter where, the problem of Mr. Lennon's conviction still stands, whether it is a week from today or three weeks from today and I do not understand the relevancy or the competency of the witnesses on that issue, as that is for the British courts to determine. As to the female respondent, there has been again, no motion to sever the cases, and if he wants that to be considered at that time, when we consider the problem of witnesses.

SIO: I can't help feeling Counsel that you are a little premature on the business of witnesses. In oth r words, with regard to Mr. Lennon, as long as the conviction stands, the witnesses are immaterial, except perhaps in length of time to be given if voluntary departure is given, or things of that kind, but it doesn't relate to the question of permanent residence. As long as the conviction is standing . If at any point in the proceeding it does seem to be relevant and you want an opportunity to present the witnesses, I'll be glad to give it to you. I'm not unreasonable with regard to the use of time. If at the next hearing you present the application and it appears that we need testimony in support of character or anything else that you want, I'll give you time to get the witnesses.

MR. WILDES: What we need, Mr. Special Inquiry Officer, is largely a question of a finger, and I think that I should, as counsel to the Lennons, be given sufficient latitude to determine when, and what witnesses I would like to

have to present my case. You may decide to rule that you are not interested in hearing my witnesses. That is perfectly within your perogative, but I believe that this interferes with the proper presentation and preparation of my case.

SIO: Well, Counsel, I am not going to listen to your witnesses on character before you have even conceded deportability. We haven't even gotten to the issue of deportability. I assume you would want to get to that, and get to it quickly.

MR. WILDES: I assume at the adjourned hearing we will also reach the issue of deportability which in the normal procedure is taken before any applications for ....

SIO: All right, Counsel, look. We've now spent a half hour simply on preliminary discussions. If we can spend that long on preliminary discussions it may take several hours to discuss the question of deportability. I'm not going to have a room full of witness waiting while we discuss deportability. If the testimony of the witnesses becomes material I'll give you an opportunity to get the witnesses. If it needs three weeks, or if it needs a month you can do that. If you want to prepare to find out who your witnesses would be, I'll give you that, you can do that in the intervening time. But I don't see that we need three weeks for the preparation of an application. I think two weeks is more than enough, but that doesn't necessarily mean that the case must finish in two weeks time. Are you available, are your clients available in two weeks time.

MR. WILDES: We are available upon the order of the Special Inquiry Officer.

SIO: All right, let's adjourn for two weeks.

SIO: Your calendar, Mr. Schiano shows what?

SIO: Off the record. On the record.

SIO: All right, it is May 2nd, at 8:45.

MR. WILDES: I am advised that there is an attorney here of Staff Counsel of New York the Civil Liberties Union, who would like to make a request to file an amicus brief before the Special Inquiry Officer and has asked whether this is the appropriatetime to do so.

SIO: A brief as to what?

BY WOMAN ATTORNEY:

Your Honor, we feel there is probably some significant civil liberties issues involved in the case and we would like an opportunity to file a brief on it at the appropriate time.

SIO: I am willing to consider it. I have no objection. You have no official status in the case, but the law doesn't exist either as a private monopoly, or as some sort of secret club and I'll be glad to read whatever you write.

BY WOMAN ATTORNEY:

Thank you.

BY MR. WILDES: Thank you very much.

SIO: All right, hearing adjourned.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF
1) John Winston Ono Lennon
2) Yoko Ono Lennon

Respondents

FILE 1) A17 557 321 - New York
2) A19 429 154 - " "

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Ira Fieldsteel

Continued
Hearing held on May 12, 1972 at 20 West Broadway, New York, N. Y.

Recorded by Dictabelt Transcribed by P. J. Killela

Official Interpreter none used Language English

IN BEHALF OF SERVICE:
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I hereby certify that to the best of my knowledge and belief the following pages numbered 15 through 73 are a complete and accurate transcript of the above-described hearing.

Signature
Special Inquiry Officer
Title
7/28/72
Date

Form I-397
(Rev. 3-25-65)

GPO 914-456

SIO TO BOTH RESPONDENTS:

Q Are you still represented by Mr. Wildes? He is your attorney here?

A (by male): Yes.

Q All right, would each of you please raise your right hand. Do each of you solemnly swear the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A (by male): I do.

SIO: Mr. Wildes, we have been proceeding in this case now for almost two months. We still haven't gotten to the element of deportability. I propose to proceed in a regular ordinary fashion today, and the first item of business is deportability. Mr. Wildes, are you prepared to concede deportability in these cases as charged?

MR. WILDES: No, there is a number of errors which have occurred which, if I may, before commenting on the allegations and the legal conclusion in the order to show cause, I should lik to comment on, to bring the case up to date because there is any number of occurrences which are not at this point in the record. Other than those, we are prepared to proceed. We are not here today to request any special adjournment. It's just that the facts themselves might indicate. To this point inthe proceedings a number of things have taken place which if given an opportunity to question on, then, we will go on. There is a discriminatory kind of pre-judgment of every application and request received and, in pursuance of my obligation to represent my clients, some time ago, I, on April 23, presented myself at the Immigration Service office and requested, as I had done previously, to see my clients' file. I was accorded that opportunity and after certain matters were removed from the files, I read whatever files were shown. When I asked to see the application for third

preference, there was no answer given to me. To get to the point, they finally produced the applications and I inspected them and found that some two months after they were filed with the Service, they had actually been untouched. Since I know that the District Director has a mandatory obligation to rule on them, I therefore requested that the District Director be ordered to rule on the applications. As a temporary request, I ask that an injunction against deportation branch be entered pending the approval or denial action on the third preference petitions. As an appropriate courtesy to the Service, which affords Counsel every courtesy, I appeared here on May 1st, the day before the last hearing was scheduled, and I appeared before your honor and requested, in the presence of the gentleman trial counsel that these proceedings be adjourned until the District Director ruled on the applications. My request was denied. I then appeared before the District Director inthe presence of the government's counsel, and repeated my request because I had hoped that we might be able to stipulate to adjourn these proceedings and then appear to request a ruling on the stipulation. The District Director also denied my request. I had no alternative but to appear the same afternoon before the Federal Court for the Federal District of New York where I requested a temporary restraining order. That temporary restraining order was given, and signed at 4:30 in the afternoon before the hearing, restraining these proceedings, pending the determination by the Federal Court of my application. A hearing was scheduled for the next morning at ten o'clock in the Federal Court and, instead of appearing here - these proceedings having been enjoined - we appeared there. When I approached the bench, the United States Attorney, representing the Immigration Service indicated that he had received a telephone call from the District Director, conceding that he would on that day, adjudicate

these applications, and that that would render my entire application moot. He indicated that will be the case, and we adjourned the proceeding in the Federal Court for a period of one week, the injunction to stand pending the adjudication. I then telephoned from the Office of the United States Attorney to the District Director, and the District Director assured me that he had just approved the application. It is still not understood to me the processing, because this would have required the transmittal of the documents to the Labor Department, and their return, but I understand that this was done by a telephone call the next morning.

SIO: Are you complaining Mr. Wildes that the applications were approved too quickly?

MR. WILDES: No...

SIO: ...that there wasn't the necessary degree of delay through processing?

MR. WILDES: I am not at all complaining about that?

SIO: It would appear so.

MR. WILDES: Those applications should have been acted on within a month of their filing. It is necessary it be pointed out, and I wanted it in the record of these proceedings, to go to a court, and get an injunction, in order to get it done, and it appears to have been done between nine and ten that morning. I should like to offer the order of the Court as an exhibit in these proceedings. I have since received the notices of approval and they appropriately, will be at a later point in the proceedings, submitted in evidence. I wish to point out that the prejudgment of these proceedings continues even with respect to the notice of approval in that the two applications were treated differently. The application in behalf of Mrs. Lennon is checked -the petition is approved - The petitioner states that the beneficiary is in

the United States and will apply for residence here, which was the case in both applications. However, in Mr. Lennon's application, that box is not checked. It is merely indicated that the visa petition has been approved, as though Mr. Lennon had no right whatsoever to apply for residence. Furthermore, as stated at the previous hearing, I wish to go on record indicating that I wish to renew - I will do this at the end of the government's case, my motion to terminate these proceedings which is within the authority of the Special Inquiry Officer. My appliction to do so before the District Director did result finally in a letter denying my application which merely indicated that the applications were denied in the exercise of discretion because Mr. Lennon has a conviction on his record and for other circumstances in the case. At no time, despite the fact that I have asked what those circumstances are, was I informed of it. I have, as a result, since filed a request under the Freedom of Information Act to determine what the government does in other cases, as a matter of record, similar to this. Another item which has occurred which I think jurisdictional, is that in my inquiry into the files that existed in this Service, I was shown a series of files, none of which pertain to the years during which Mrs. Lennon was in this country prior to the last two or three years. She happens to have been here for over fifteen years prior to that in a number of different statuses. I had to find out, purely by mistake, that some one turned up her Alien Registration Card, under the name of Yoko Ono Cox which appears on its face, to show that she is a permanent resident of the United States. I have asked her many questions with respect to this because it just came to my attention last night. And it is impossible for me, at this point, to determine by her absences and trips to this country whether or not she has retained that permanent residence and I would like to, with

respect to pleading as to the order to show cause, show how I feel that this is relevant and perhaps arrive at some conclusion.

SIO: May I see the card please?

MR. WILDES: Yes.

SIO: What is it, Counsel?

MR. WILDES: If I may I will conclude my preliminary remarks. I haven't much more to say. I want to reiterate the basic proposition which seeing this card reaffirmed in my mind that we really shouldn't be in these deportation proceedings. I submit that there has been such prejudgment and discrimination in this case that brought deportation proceedings against a permanent resident of this country, on the grounds that she visited here and that she overstayed her visit, which is jurisdictionally erroneous. I hope that the proceedings will continue in a context which, suffice to say, will not give us any reason , say twenty years from now, to wonder why we removed these aliens from the United States.

SIO: Where did you get the green card you presented, Counsel?

MR. WILDES: The card was sent to me about two weeks ago with a pile of other documents from an office in England where the Lennons had apparently their old documents. I was reviewing it again last night in a large envelope, and I was shocked to find this. I was even more shocked when I considered that I inspected filedx of the Immigration Service and never had I found a file under that number, nor had I found a file in which residence was ever requested.

SIO: Didn't Mrs. Lennon tell you that she had been admitted as a permanent resident on one occasion?

MR. WILDES: No.

SIO TO FEMALE RESPONDENT:

Q Didn't you know that you had been admitted as a permanent resident,

madam, on one occasion?

A Well, see the card says that it's Yoko Ono Cox, and since I am not Cox now, I hate that name anyway, and I didn't want to, since my name is changed now, I didn't want to think about that.

Q Did you think that changing your name changed your legal status in the United States?

A Well, Ithought that was possible since my marital status changed.

MR. WILDES: I must admit, I have never even conceived of asking the question in the deportation concept. And although I might have alluded to it in some questions when I had an opportunity to visit my clients, this is a very difficult concept. I don't think I ever put the question to her as to whether she was a resident of the United States.

SIO: Well, I would say, Mr. Wildes, that you have now reached the point that I asked you to reach approximately two sessions ago, and that is, the basis on which you want to proceed with these cases. They are two individuals, they are two separate cases. It would seem to me the cases should be severed at this point, and when I say severed, I mean legally, I don't have to have them in separate rooms. But they are two separate cases and you, apparently stand on two separate legal bases at this point.

MR. WILDES: I will state now what my position is here. I have no objection to the rendering of separate decisions by the Same Special Inquiry Officer, but/no circumstances would I consent to separate this inseparable couple, under insofar as conducting two separate proceedings before two separate officers under separate....

SIO: That's not what I had in mind. Is this a surprise to the government?

MR. SCHIANO: Yes, it was shown to me this morning. I suggested to Mr. Wildes

that we may give separate consideration to this question, without necessarily separating the matters. This is not a matrimonial forum. I just wish to comment on Mr. Wildes'statements if I may. Mr. Wildes referred to availability of files. He did ask me for an opportunity to review certain documentation. That opportunity was granted to him. The documentation was made available and was available all the time. The visa petition became available in less than ten minutes at the request of this office and in fact it was delivered as other documents are normally delivered, in sealed envelopes, and had no special connotation as towhether or not it had been previously reviewed, or was not reviewed. He was not denied anything in the way of courtosy or consideration by way of availability of documentation, and as to the visa petition being different, it merely reflected the government's attitude that Yoko One might appear to be statutorily eligible, but Mr. Lennon might not be statutorily eligible for reasons already discussed and expanded on the record. As far as prejudgment, we are not concerned with any prejudgment. We are concerned with some judgment being rendered in reaching that point in these proceedings.

SIO: All right, Mr. Wildes, let's come back to my question again. I asked you before whether you were prepared to concede deportability as charged. Obviously you are not prepared to concede it with regard to Mrs. Lennon, and and - I can see there may be some substantial question as to whether she ever abandoned her residence in the United States, or just what the exact posture of that case is. But I will not permit you to proceed with descriptions of the visa petitions or the applications for permanet residence until we reach them. And we haven't reached them until we dispose of the question of deportability. Now, you can either concede the facts as charged, or we can proceed item by item. Now, what do you want to do?

MR. WILDES: Perhaps the government attorney has a suggestion on how we ought to handle this. I am prepared to plead to the allegations with respect to Mr. Lennon. Perhaps the government's attorney has some suggestion as to what we should do with respect to Mrs. Lennon. I am sure you will want to get the file.

MR. SCHLANG: Yes, I don't think we have to warry about that just yet. I think those things can be done on both orders to show cause. What conclusion will follow will depend upon examination of the facts, both contained in the previous file, and the examination of the itineraries of Mrs. Lennon over a period of time. That could be explored perhaps separately, but I think in the beginning, I think we can get some statement on the record as to when they entered the United States, and what visas they had.

SIO: Well, Mr. Wildes has indicated that he is prepared to concede the allegations of fact, and I assume one or both of the conclusions of law in the order to show cause. Is that correct?

MR. WILDES: I did not say that.

SIO: You did not say that. Well, would you say it again, please.

MR. WILDES: I am prepared to plead but separately with respect to each allegation and each conclusion.

SIO: All right, then, let's proceed.

MR. WILDES: The cases differ insofar as the first allegation is concerned.

SIO: Mr. Lennon's first, please.

MR. WILDES: With respect to Mr. Lennon, we admit that he is not a citizen of or a national of the United States. We admit that he is a native of Great Britain and a citizen of the United Kingdom and Colonies. We admit that he entered the United States at New York, New York, on or about August 13, 1971. We admit that at the time he was admitted as a nonimmigrant visitor for

pleasure and was authorized to remain in the United States until February 29, 1972. We admit that on March 1, 1962 he was granted the privilege of departing the United States voluntarily on or before March 15, 1972. We deny that he abandoned his intention to depart from the United States on or before March 15, 1972. With respect to the allegation that on March 6, 1972 the privilege of voluntary departure to March 15, 1962 was revoked, we admit that we were served with a letter, but we do not necessarily admit that the District Director has such authority. We therefore deny that he remained in the United States after February 29, 1972 without authority. It would be our position that during the period of February 29, 1972 through March 15, 1962, Mr. Lennon could not form an opinion or a determination that he would not depart, or that he would depart, because of the situation that he was involved in, of trying to locate the child Kyoko. We therefore find that we must deny the legal conclusion. The only issue as I see it is whether as a matter of abandonment of intention during the fifteen day period.

SIO: Well, there is no serious contention is there, for example, that Mr. Lennon is now willing to leave the United States and has been impeded by the service of the order to show cause? He definitely stated on a number of occasions that he wants to stay in the United States. He would like to stay in the United States and this is his dearest wish.

MR. WILDES: Well, let's have his testimony.

MR. SCHIANO: I want to examine Mr. Lennon.

SIO: All right, would you do so, Mr. Schiano.

MR. SCHIANO TO MALE RESPONDENT:

Q Mr. Lennon, Mr. Schiano would like to ask you some questions.

MR. SCHIANO TO MALE RESPONDENT:

MR WILDES: I have no objection.

MR. SCHIANO TO MALE RESPONDENT:

Q Just remain seated. Mr. Lennon On March first, did you have the intention of departing from the United States on or before March 15, 1972?

A I had no intention either way. We are looking for the child Kyoko, and neither of us, had made up our mind, either way at all about it.

Q In other words, you did not have the exact intention of departing?

A No.

Q Do you intend to depart now?

A I'd still comment, it's impossible to make up my mind because we are looking for the child and we don't know where she is.

Q If an opportunity were given to you to depart from that time, or within the next five or ten days, would you be willing to depart?

A Impossible, because I don't know where the child is.

Q In other words, whether you were given th time to depart and if you were not in time forced to depart, you would still be here today, pursuing your application to become a permanent resident?

A I'm afraid so, I'm not sure I understand.

Q If the government had not revoked the time for you to depart by March 15, you still would remain here?

A I guess so.

SIO TO MALE RESPONDENT:

Q What Mr. Schiano is asking you, is whether you had any definite plans for leaving, and were those plans interfered with by the government's starting a deportation proceeding against you?

A Well, not really, but I just feel it's a matter of if we find the child. Our whole life is built around that.

MR. SCHIANO: I have no further questions on that issue.

SIO: Do you have a copy of the revokation of voluntary departure, either you or Mr. Wildes? Mr. Wildes, do you have it? Or perhaps the government has a copy?

MR. SCHIANO: I have. May I submit both letters, the letter of March 1st, and the one of March 6th, referring to the interrogation- the revokation. Copies of the letters addressed to the respondent.

SIO: Did you receive the original of these, Mr. Wildes?

MR. WILDES: Yes.

SIO: All right, the Court order in the Southern District is Exhibit 3. And the letter of March 1st, willbe Exhibit 4, and the letter of March 6th, will be Exhibit 5.

SIO: Mr. Wildes, is there any thing further that you wish to offer, or present in connection with th deportability issue in Mr. Lennon's case?

MR. WILDES: No.

SIO: Mr. Wiles - let's proceed with Mrs. Lennon's order toshow cause and see where we stand on that. Do you have a copy?

MR. WILDES: Yes. Well our impression on the first allegation as to whether Mrs. Lennon is a citizen or national of the United States, I would have to deny it, based upon the green card, which would make her a national of the United States.

SIO: On the green card - makes her a national of the United States, Mr. Wildes?

MR. WILDES: I understand that a person who owes allegiance to this country is a national. I stand to be corrected, but I'd be surprised...

SIO: I think you're mistaken, the term nationality applies to a limited group of people and it certainly does not encompass those people who are lawfully admitted to the United States for permanent residence. There is no contention that she is a citizen of the United States, is there?

MR. WILDES: I think we can circumscribe there is no contention that she is a citizen or that she is a national, according to the definition which you just gave. There is the contention that she is or may be a permanent resident of this country, but I am going to go through the order to show cause so the record may be complete.

SIO: TO COUNSEL: Is she a native and citizen of Japan?

MR. WILDES: Yes. We also admit the allegation with respect to her admission, allegation number 3. We admit allegation numbers 4 and 5 that she was admitted on this trip as a visitor and granted until February 29th , that on March 1st, she was granted the privilege of departing on or before March 15th, My position would be practically the same in this case. that she did not abandon her intention to depart the United States and therefore as to allegation number 6, I deny the allegation, that allegation being that you abandoned your intention to depart from the United States on or before March 15, 1972. We admit allegation number 7 in line with the letter1 which is in evidence as Exhibit # 5. However, only with respect to the factual allegations. We deny therefore that she remained in the United States after February 29, without authority. And we likewise deny the legal conclusions and I am willing to stipulate with Counsel that if she spoke, her testimony would be the same as her husband's with respect to the only remaining issue, as to the intention between March 1, 1972 and March 15, 1972.

SIO: There is no contention, in either case, that there is some extension

of their rights to remain in the United States, other than the one referred to in allegation five. In other words, apparently they were given time until March 15th, and that was subsequently revoked. There is no contention that there was any othertype of grant of time to them other than the one that was revoked? Maybe you are questioning the right of the Immigration Serviceto revoke it?

MR. WILDES: That's right, that's correct.

SIO: Well, tentatively, I am inclined to think that deportability is established by those allegations. Now you are entitled to your legal claim that the District Director does not have the right to revoke it, but I think the case is at that posture to proceed with the question of discretionary relief. Now, have you prepared applications for discretionary relief in these cases?

MR. WILDES: Yes, I have.

SIO: May I have themplease?

SIO: And the supporting documents for them, the 325's and so on. Give those to Mr. Schiano. Now, fingerprint charts?

MR. SCHIANO: We will have to arrange for fingerprints later today.

SIO: All right you can do that later. And when they are taken, give them to Mr. Schiano.

MR. WILDES: I have various other documents. I have one or two of which lack translation, and I can plan to submit all of them.

SIO: Are these the documents in Japanese, the birth certificate, you mean?

MR. WILDES: Yes.

SIO: All right, you can submit them - how long do you think you will take for the translations?

MR. WILDES: Probably just a day or so, a few days.

SIO: All right, you can have a week to submit them. As I gather, we probably

will be continuing Mrs. Lennon's case as a subsequent date anyway.

MR. SCHIANO: We can fix the date now.

SIO: And bring in the translations at the time of the resumption.

MR. WILDES: It would be probably either Tuesday or Wednesday, I'm not sure which, probably Wednesday, Wednesday morning.

SIO: This coming week, you mean.

MR. WILDES: Yes.

SIO: Exhibit 6 and 7. Do you have copies, Mr. Wildes?

MR. WILDES: I'll get them.

SIO: Do you have copies of the ~~medical~~ ACTUAL approval of third preference?

SIO: When received, for Mr. Lennon, Exhibit 8 and for Mrs. Lennon, Exhibit 9. MRr Schiano, I assume there were labor certifications in each of these cases.

MR. SCHIANO: Correct.

SIO: Or they would not have been approved. The reason I am raising the question is because the third preference is considerably behind, the nonpreference is open.

MR. SCHIANO: I think third preference has a priority date of January 1971. I'm not sure.

SIO: As I say, these have just been approved..

MR. SCHIANO: I know the nopppreference quota would be at least in the normal procedure..

SIO: That's the way I'm inclined to treat that one.

MR. WILDES: Would it make any difference?

SIO: I would assume it would not, Mr. Wildes.

MR. SCHIANO: You see the government's position in adjudication of third preference does not necessarily constitute a disposition of his case, as you reaall.

SIO: Yes, I raised that issue at the very beginning, Mr. Wildes, as to whether it was in fact necessary, but there were elements at that time perhaps, well I don't know if he had certification.

SIO TO COUNSEL: Did you have the labor certification at that time?

MR. WILDES: No.

SIO: That's what I thought. you did not have it, but I had asked you at one point whether you needed - you were raising the question, that the third had not been approved, and I raised the question as to whether you needed the third and you said that you needed it and you wanted it.

MR. WILDES: Well, the only way - he was an outstanding artist.

SIO: In conjunction with the third? All right.

MR. WILDES: If we ever needed a labor certification to begin with.

SIO: Mr. Wildes, do you have any further evidence that you want to submit? In connection with these applications?

MR. WILDES: Yes.

SIO: What is that?

MR. WILDES: I wouldLike to make a preliminary statement with respect to the basis on which I am applyinf for - someone from the government has raised the record of conviction. Does the government intend to submit that?

SIO: Do you have it there, Mr. Schiano?

MR. SCHIANO: Yes, as it is the burden of the respondent to show admissibility...

SIO: Let's not go into the question of burden of proof. If you are going to introduce it, let's get in onthe record.

MR. SCHIANO: At your direction, I gave Counsel a copy and it is admitted that it relates to the male respondent.

MR. WILDES: In our discussion.....

MR. SCHIANO: It does relate.

SIO: One thing at a time, Mr. Wildes. The primary question is, does the record relate to your client, Mr. Lennon?

MR. WILDES: Yes.

SIO: Now, with regard to the element of burden of proof, I consider this is presumptively correct. In other words, it is certified by a Consular Officer, it recounts its origin in the Magistrates' court and I assume the facts in there are correctly stated. Any deviation from that would have to be established by you. I would say that the burden would be on you to contradict, to show that these facts were not correct. Well, I assume, it's a government office and the government is bound, unless you contradict it, I consider that to be the established facts. Now about the provision of law, Mr. Schiano, do you have that?

MR. SCHIANO: We both have it.

SIO: You both have the wrong section.

MR. WILDES: Right now what I want is a good deal of legal research, which I would like to do in conjuction with....

SIO: Your legal research comes afterwards. All I want now is the Section of law that is involved.

MR. WILDES: Well, the Sdction of law is stated right here.

SIO: I know, but I want the text of the Section of law, that's what I'm after.

MR. SCHIANO: The 65 Act does not pertain to that section.

SIO: Do you have a copy of the 65 Act?

MR. WILDES: I had intended to make photostatic copies and attach certified copies to a brief which I intend to file.

SIO: Do you have the original available to you, or can you get it?

MR. WILDES: I can get it. I will be submitting certified copies of the original of the Act referred to in the conviction.

SIO: Well, if Mr. Schiano is satisfied that this is the Act in question, I do 't think you have to go to the trouble to certify it. It's a matter of public record - what the statutes of England are - and I don't think we have tobother certifying it, and I don't think we need have any question about it.

MR. SCHIANO: I don't know whether it is complete because the conviction record does refer to regulations issued under the Act.

MR. WILDES: Well, I don't know how the 64 regulations were issued under the 65 Act.

MR. SCHIANO: No, no, the 65 Act refers to the prior Act incorporated by reference and the regulations that were made thereunder. I don't think it's a serious disability though because it does refer to similar convictions to the type we have at hand.

SIO: Well, let me understand what you are saying. Are you telling me you have handed me the Dangerous Drug Act of 1965, which has certain statutory provisions. Are you tell ing me that there were regulations promulgated under this Act, and that it is a violation of the regulations which is involved here? Is that what you are telling me?

MR. SCHIANO: The conviction record refers to regulations in the Dangerous Drug Act, it covers those regulations.

MR. WILDES: Well, the certificate of conviction speaks for itself.

SIO: But it says contrary to regulations three dangerous drug, number two regulations, Dangerous Drug Act of 1965, which would sound as though there were regulations which were promulgated under this Act.

MR. WILDES: I would have no way of knowing whether the ones offered....

SIO: Mr. Shhiano hasn't offered anything. You offered this dangerous drug Act of 1965. I am not rejecting it, I think it is necessary in connection with the discussion.

Hearing 5/12/72

MR. WILDES: I would wish to offer.

SIO: I would permit you to, I want you to, I want the regulations. I want to know exactly what he was convicted of.

MR. WILDES: The record of conviction says - having in his possession a dangerous drug, canabis resin - without being duly authorized. And it has a certain date, it's 1968, so I just don't know whether there were others issued in 66 and 67 and so on, but the Act is clear, it clearly refers to the same Act.

MR. SCHIANO: We may be arguing about nothing. It may be that the conviction..

SIO: I have no way of telling from where I sit whether - well obviously it must be a violation of the Dangerous Drug Act of 1965, but I still would like to see the specific regulations which was considered violated.

MR. SCHIANO: I will also attempt to get that regulation. It's possible I may have it Tuesday.

SIO: All right, so that we are going to get a good copy, although there does not seem to be anything wrong with this copy. It is all easily legible, it seems a little bit short at the bottom. All right, we need a good copy of the Act, and we need the set of regulations if we can get these.

SIO: The Act will be entered as Exhibit 11, subject to being replaced by a better copy.

SIO: All right, proceed, Mr.Wildes.

MR. WILDES: The Special Inquiry Officer is probably aware that though our immigration act was concerned with traffic in narcotic drugs, it never mentioned the word - marijuana - and the transgression in the Act was limited to the possession for certain purposes, which had to do with traffice. In 1956 it was amended to include so-called simple possession.

SIO: All right, Mr. Wildes, I suspect that you are now embarking upon on what

is a legal argument regarding the legal effect to be given to this conviction and that is something that you said you were going to do in the form of a brief, and I think there was an offer of a brief from the Civil Liberties Union, as I recall, whether it was going to encompass that or not. Now, I would suggest that you merely state in summary form what it is that you propose to establish, or what would be the burden of your argument, and to present the legal argument in a brief. This is not the place for that kind of an argument..

MR. WILDES: The gist of the argument - the testimony - will be that the substance referred to in the conviction, that is Cannabis resin is not marijuana, and in view of the fact that the statute in the cases are silent and we have no statutory definition of what is marijuana, I asked a witness today to offer, testimony, who is an expert on that subject. I have a number of other issues on which evidence is to be offered, as well and that has to do with the discretionary aspects of the application which we are filing for - adjustment of status. And I have witnesses who are available today and who could not possibly be available at any other date, we might reach to resume this hearing, so that I hope that there will be an opportunity for these witnesses tobe heard.

SIO: How many witnesses:

MR. WILDES: Unfortunately, I have only had an opportunity to meet these people this morning, but I would venture to say that I have six or seven.

MR. SCHIANO: Perhaps I may be of some assistance. If Counsel wishes to recite who would appear and state what, I will stipulate that they would say that without the necessity of presenting the witnesses.

SIO: Well, Mr. Schiano, I appreciate the gesture and if that would be all right with Mr. Wildes, I would have no objection. But I strongly suspect

- since Mr. Wildes went to the trouble to get the people here - that he would feel happier if some of their testimony were taken. I certainly will not, Mr. Wildes, accept a parade of some half dozen witnesses, all of whom are going to testify to what nice people these are. Maybe it has a certain accumulative effect, but I think that you would be unduly burdening the record to go beyond - let's say - two. Why don't you pick out your two best witnesses...

MR.WILDES: The information that these witnesses would be giving is not cumulative. They have certain first hand information as to their background and good moral character. Others have first hand information of what they are doing now and what time they need to continue these projects which is also relevant, if we file an alternative request for voluntary departure, and I do promise, however, to be very brief.

SIO: How can the witnesses give better testimony as to what those people want to do, or intend to do, than they themselves? I don't need corroboration. If Mr. Lennon tells me that he needs three months to do some specific thing, relating to the child, or to some legal procedure, and the government gives no indication that it doubts his word, why should I doubt his word? Why do I need six witnesses telling me that?

MR. WILDES: The problem is Mr. Lennon does not know.

SIO: But the witnesses do?

MR. WILDES: Yes, sir.

SIO: Oh, come on, Mr. Wildes.

MR. WILDES: Mr. Special Inquiry Officer, a lot of the arrangements that are made here are carried out by others. The participation of the Lennons may be very limited with respect to appearances and so on, and a lot of those arrangements as to how long they might take, the making of the arrangements, are

completely out of the knowledge of my clients.

SIO: Well suppose you proceed with the first witness relating to Cannabis Resin.

MR. WILDES: Yes.

SIO TO WITNESS:

Q I assume that you speak English Doctor?

A I do!

Q All right, will you please raise your right hand. Do you solemnly swear the testimony you give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

SIO: All right, Mr. Wildes. Tell us the name please.

MR. WILDES TO WITNESS:

Q Will you give us your complete name?

A Lester Grinspoon, M. D.

Q And what is your occupation and your professional affiliations?

A I am an Associate Clinical Professor of Psychiatry at the Harvard Medical School and Director of Science and Research in th Massachusetts Mental Health Center. I am also a member of the Boylston Psychoanalytic Institute.

Q Have you done specialized work in the field of narcotic drugs, and marijuana?

A I have. I have published roughly about sixty papers, most of which have to do with drugs, and two books, and my particular interest in this particular drug- marijuana - spans now four and a half years I have been in research on it. I have here a series of papers published...

MR. WILDES: Does the government have any question with respect to his qualifications?

MR. SCHIANO: No.

SIO: Well, it can't hurt, Mr. Wildes, Let's have it.

MR. WILDES: This book...

SIO: All right. The Clinical _____ by Lester Grinspoon, M. D., will be Exhibit 12, Go ahead, Mr. Wiles.

MR. WILDES TO WITNESS:

Q Doctor Grinspoon, will you tell us, as we are all laymen here, with respect to these terms, - - what is the history and the meaning - of the term Cannabis Resin?

A Well, the word Cannabis actually comes from the label which linnaeus affixed to the plant.

SIO TO WITNESS:

Q That's L I N N A E U S?

A Yes....affixed to the plant which is commonly called Indian Hemp - 1753. He called the plant cannabis staiva,and pretty much since that time, products of the Cannabis Sativa plant have in generic terms been referred to as Cannabis, and that is to say, the ono-fiber - as there are also fiber products from the plant, so the non-fiber parts are theGeneric term referred to as Cannabis.

Q Would you tell us what Cannabis Resin is?

A Well, Cannabis Resin is the - let me go back a little bit - the plant is a DIOECOUS plant, that is there are male and female.

Q How do you spell that?

A DIOECOUS- -spelling is not my forte.

Q It's not mine either, that's why I ask you.

A I can look it up.

Q No, that's all right, what does it mean?

A Oh, it means the plant has two sexes. There is a male and a female, and this resin is obtained from the female plant at a time when the female begins to flower, treated from the inflorescence of the flower's distallate parts. Now the resin is obtained in a number of ways, usually in Nepal and India and in other parts of the world as well but whatever way is used for taking it, the produce as it finally emerges is referred to, in India as CHARAS and in the TURKISH world as Hashish. And this is what Cannabis Resin refers to.

Q Do you consider that Cannabis Resin is Hashish?

A Yes.

Q Is Cannabis Resin Marijuana?

A Cannabis Resin is not marijuana.

Q Is Cannabis resin a narcotic drug?

A Cannabis resin is not a narcotic drug.

SIO TO WITNESS:

Q I don't wantto interrupt you, but you haven't said what marijuana is.

A I will tell you what marijuana is. The word marijuana, the etiology of it is not certain, but it is largely thought now to derive from the Portuguese word Maribongo which means _____. Regardless of its origin, the word is a north American word for what in India is referred to as GHANG and in England it is also called Marijuana but frequently the word PACCA, which is a term which comes from South Africa, what it actually is - the cut part of the cannabis sativa plant, usually of the female, but it may also be female and male, and it's a cutting of these parts usually mixed withstems and seeds and so forth and so on. And as I say, it is called a number of things in different parts of the world, but certainly in North America it is

marijuana, possibly the term marijuana is used in other parts of the western world, but there is no question that marijuana refers to just this particular form of the plant and not to the resin.

Q In other words, what you are saying , in essence, is, that there is a plant known as Cannabis, or Cannabis Sativa, which is the Indian Hemp and that there are various things which will come from that plant, that the common usage of marijuana is that the leaves or the stems or the tops or the seeds or a combination of those, whereas Cannabis resin is, you might say, a specialized and limited product of the plant, which consists of the resin from the female plant when it begins to flower?

A That's correct. The resin is either scraped off, orit is squeezed off. There are three different forms of the resin, depending really on how it is collected.

SIO: All right, Mr. Wildes.

MR. WILDES TO WITNESS:

Q Based upon your knowledge and experience, and research in this field, would I be correct in saying that it is your opinion that Cannabis Resin is not marijuana?

A Cannabis Resin is not Marijuana. Marijuana is not Cannabis Resin.

MR. WILDES: I offer this in evidence.

SIO: Would you want a short recess so that you could read this, Mr . Schiano?

MR. SCHIANO: No more than fifteen minutes.

SIO: In any event, I assume you have no objection to it being made part of the record as Exhibit 13?

MR. SCHIANO: None.

MR. WILDES: I have no further questions.

MR. SCHIANO TO WITNESS:

Q Would you describe Hashish as being related to Cannabis Resin?

A Well, Cannabis Resin would have to be hachish, although a more purified form.

Q Is it not hashish until it is solidified?

A Well, the resin itself is a kind of sticky - I mean an orange and yellow oleo resinous kind of a solid.

Q Just a chemical treatment?

A Pardon.

Q A different chemical treatment for it?

A There is a different chemical treatment for what?

Q For hashish? In drying it.

A From what?

Q How is it solidified?

A Purified?

Q Is it a chemical process?

A No, but there is - the resin is a solid like, it;s not a liquid, it;s not a gas.

Q Is it hashish?

A Is the r@:in hashish? Growing at a certain altitude, this/yellow oleo resin in Nepal, scraped-off put it in a box and you would have a very high grade solid.

Q With no further action to be taken thereon?

A There are further actions that are generally taken if....

Q Further steps are tobe taken?

A How do you mean?

Q Does it become hashish by itself, or some other agents must be introduced into it?

A No, no other agents must be inserted. They take it just like that and use it. There are other things that have to do with the commercial aspects of the flower petal, they form or make it into little bricks or fingers, or what have you.

Q Well, is it dry?

A It may be dried, yes.

Q How?

A Well, it's usually left in leather bags for a period of time to dry out and then some of the moisture may be taken out to make it even more solid, like boiling it, well, not in the water itself, but raising the temperature one different way or another to get rid of the moisture. There are a number of ways - of preparing it for the market, but essentially that really has to do with how easy it is to handle and how concentrated it is and so forth.

SIO TO WITNESS:

Q Is Resin the source of all hashish, or is hashish got some other derivatives? Or some other family tree?

A No, resin is the source of Hashish. Now, in some forms of Hashish the highest grade of Hashish is collected. People don't just go around and scrape. But what they do for example is run through the field of Cannabis Sativa Plants, the one that produces the resin stands about six feet high and they run through the fields either with leather jackets on or nude and then they come in from the field and people take these little bits and traces off them. And that is actually the first step in the production of Hashish, there are other impurities also, I mean it isn't pure Cannabal, derivatives quite obviously, there are other things in it, but it's the purest form.

SIO TO WITNESS:

Q In other words, you have two family trees we are dealing with. One is the resin aspect and one is the you might say the leaves or the plant itself. And the resin and hashish belong on one side and the leaves and the plant and the stem belong on the other.

A that's correct, and in fact, the leaves and the tops, the tops of the plant the florescence is at the top of the plant, there are actually two grades of that. There is BHANG which is like our marijuand but there is also CANJA which is another leaves part of the plant, another kind of a product as opposed tothe resin product.

MR. SCHIANO TO WITNESS:

Q Is there a solidifying agent for hashish?

A I am sure there probably are agents which ....

Q Do you know of any?

A No, I don't know exactly.

Q Do you know what the chemical agent is for solidifying hashish?

A Surely there are a number of things depending upon on how it is going to be marketed.

Q But you don't know?

A I don't know a particular one.

Q Do you know the chemical expression for Cannabis Resin?

A The chemical expression?

SIO : Do you mean the organic chemical formula, is that what you are asking?

MR. SCHIANO: Yes.

BY WITNESS: Are you talking about Cannabanol, or Cannabanal, or what?

BY TRIAL ATTORNEY: Cannabis Resin?

Guns para 5/12/76

MR. SCHIANO TO WITNESS:

Q Cannabis Resin?

A Cannabis resin consists of a number of Cannabinoys of which some of them I mention Delta One Tetrahydro cannabinal, Delta Two Tetra hydro cannabinal. These are all constituents of resin.

Q Do you understand that the term Marijuana in our law is a statutory term and not necessarily a chemical ormedical term?

SIO: Well, I don't think the doctor is capable of answering that question. That's a legal question.

MR. SCHIANO: I offer to you for evidence, Title 21 Food and Drug Law which incorporates the term marijuana - its referred to.

MR. WILDES: I object to the introduction in evidence . Definition of marijuana is not limited to that contained in the Immigration and Nationality Act. There are many definitions. Each federal aspect of our government has their own definition. The Immigration Service....

SIO: Just a minute. Just a minute. This again, goes to the legal problem and it's not really the doctor's concern. The doctor has clearly dilineated for us the cannabis plant, its various parts and what its various parts are named. What Mr. Schiano is offering is a definition within Title 21, chapter 13, on Marijauna, but that's not his concern. This is a legal concern.

MR. SCHIANO: I offer it into evidence.

SIO: It has nothing to do with the doctor's testimony. All right, you can hold it.

MR. SCHIANO: I defer further questioning of the doctor . Frankly I was caught by surprise by the doctor, on this issue. I still believe that the term marijuana comprehends Cannabis Resin in the statutory sense.

SIO: Just a minute, please. The doctor - I know from my own experience a doctor's testimony is difficult to get, it is expensive to get, it is a burden on him, and I would like, if possible, to finish with the doctor. Now, it is true that you are caught by surprise when you say you want to defer, do you mean to some other date, or do you mean later today?

MR. SCHIANO: I may not call him again at all.

SIO: You are reserving your right, if necessary?

MR. SCHIANO: Correct.

MR. WILDES: We have been very fortunate to have the doctor, and we didn't intend to have it as a matter or surprise. We were very fortunate that the doctor was available to come to testify, as the hearing was scheduled on the right day. In view of my experiences with doctors, it is not very easy to make arrangements to bring him back.

SIO: All right, if necessary, we can ask the doctor to answer questions there. There are all kinds of ways to do it, but I still doubt, on the basis of his testimony - which seems to be purely biological, so to speak a combination of biology and usage, and I don't really think it will be necessary.

SIO: Do you have anything further from the doctor?

MR. WILDES: No, I don't.

SIO: All right, you are excused doctor, thank you very much.

SIO: Why don't you....

MR. WILDES: I had arranged my witnesses in the order in which I intended calling them, and I owe them an apology, and I have not had an opportunity to speak with any of them.

SIO: All right, what do you anticipate as the length of their testimony?

MR. WILDES: I would say not more than three or four minutes each.

SIO: All right, bring in your next witness.

MR. WILDES: Yes.

SIO TO WITNESS:

Q What is your name?

A Thomas P. Hoving

Q All right, Mr. Hoving, will you please raise your right hand . Do you solemnly swear the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q All right, put your hand down.

SIO: Mr. Wildes.

MR. WILDES TO WITNESS:

Q Mr. Hoving will you please give us your complete name and your present title and former affiliations?

A My name is Thomas P. F. Hoving, I am at present Director of the Metropolitan Museum in New York City. I am also a member of the New York State Council on the Arts. I have worked at the Metropolitan Museum since 1959. Prior to that I received a Ph.D in Art History from Princeton University, along with three other degrees relating to the special study of art in various forms. Between the years 1966 and lat 1967, I was the first Administrator of Arts Recreation and Cultural Affairs of the City of New York, and prior to that, Parks Commissioner. Starting in 1966, I am a member of either the Board of Trustees or Director of a number of major corporations in the United States, educational institutions and civic institutions.

Q I think the government will concede that your knowledge in the field.

MR. SCHIANO: Yes.

MR. WILDES TO WITNESS:

Q Are you personally familiar with John and Yoko Ono and with their artistic work?

A Yes, I am. I am more familiar with Mr. Lennon's work. I first came across Mr. Lennon in 1966 when as Parks Commissioner of this city I was at least in part responsible for having Mr. Lennon and the other members of the group the Beatles come to New York City and play at Shea Stadium. I was the landlord of Shea Stadium at that time and ventdown to the area where the group was dressing and changing to meet them. I had heard a great deal about them and that's a phase which is not the phase of this thing today, that would be Beatlemania phase, and I went down to speak with the memberr of the group with my young daughter who I think was worked up to a state of catatonia, when she met them. Mr. Lennon at that time talked to me for some significant moments, and was extremely sweet with my dumbstruck daughter and she she began to talk after that. I don't think this is very pertinent part of the record here but we discussed various things and I found him extremely forthright, intelligent, a man of certain grace and politeness, and was very much impressed with what I saw. That was a different time and a different period. That's when Mr. Lennon was basically a performer, and I think what I would like to say now is that I do not believe that the basic character which quite clearly seemed apparentthen has changed, but I feel that the artistic nature of Mr. Lennon has remarkably changed for the better. There are few people in the last period of this decade in all of the arts, whether it's painting or sculpture, or architecture, or performing arts, who have contributed so much in an extremely deep and essential manner as Mr. Lennon. And I would say that my basic business in life, sir, is a person who I recognize, exhibit and teach about artistic qualities. That is the nature of my business and I believe that Mr. Lennon has achieved and is achieving

now is of prior artistic importance and I would consider him a great resource to this city and to the country. Needless to say as we all know artists throughout time have sometimes acted in ways that those of us who were more on the bureaucratic side of life might consider a little bit strange. I daresay one of the great painters George LaTour, whose show opened in the Louvre in Paris just the other day might not have been able to sustain the inquiry of various well meaning and very responsible rules which naturalization, after all his own town of Springerville, got together a petition and condemned him for acts of public annoyance which were nothing as his great artistic character were a fundamental part of it and of course his art remains universal. I don't know that what Mr. Lennon has created is going to become a thing of universal quality, I don't think that is in issue but I think as far as today's times are concerned, the work has been among the very best created and there has been an awful lot of good people in the last decade or two and he would stand among the top of that. I believe that the basic character of the individual is excellent and I have no doubt about his artistic ability and qualifications. I would say if he were a painting, he would be hanging in the Metropolitan Museum, benevolently on the wall, and if he were to ever come to give a series of lectures or what have you on the various sides of art, he would be certainly welcome to do that. Of course in his exhibits and performance makes a great contributic a very important part. The Metropolitan by the way has a porforming arts section with several auditoriums...

SIO: I remember the Museum.

BY WITNESS: Were you able toget in to it? But as far as the work of Mrs. Lennon is concerned I am not familiar with it, but I feel quite solid in my

belief that she is very serious in it. Here is a picture....

MR. WILDES: Mr. Hoving, I want to thank you very much for coming down here.

SIO: You are not planning to deprive your nine year old child of this picture are you? You are just offering it as a view.

MR. HOVING: I would leave it...

SIO: No. Thank you very much.

MR. HOVING: My pleasure. Thank you.

SPECIAL INQUIRY OFFICER: Next witness.

MR. WILDES: My next witness - My apology with respect to time. My second apology with respect to time goes to Mr. Dick Cavett.

SIO TO WITNESS:

Q Will you raise your right hand please. Do you solemnly swear the testimony you will give today will be the truth, the whole truth and nothing but the truth, so help you God?

A I do.

SIO: All right, Mr. Wildes.

MR. WILDES TO WITNESS:

Q Mr. Cavett, will you state your full name and occupation and association for the record?

A My full name is Richard Elva Cavett, and I am a television performer, a talk show host and comedian, employer of talent in that regard, and I have been inthat capacity for about the last four years on an irregular basis I graduated from high school and Yale University in 1948 and have been pursuing this career since.

Q You are a purveyor of talent?

A An employer of talent.

Q I would ask you to comment, if you will, upon the effect onthe entertainment field of refusing to let the Lennons remain here?

A Well, my opinion is, the Lennons are an important artistic presence in this country. I know from associating with the people that they are associated with and people in the various arts, that the Lennons are considered by those people highly estimable in high esteem that they are considered a kind of inspiration by their constant restless activity, constantly testing themselves, fulfilling themselves in challenging artistic ways and so forth and they seem to be a kind of stimulus on the members of the community that I am involved with and employ on my show. They feel that it's good to have them around, that they are an inspiration not only to other artists but to - if I'm not rambling on too long - - to young people who are in danger of falling into apathy, seem to be constantly impressed by the example of the Lennons, as people who are constantly active, and constantly concerned with what is valuable and true and bhe best way of expressing it. I believe they set a good example in that sense. The young people whom I am concerned with in my audience who write in who feel the Lennons are noted for doing something good with their life.

MR. WILDES: I have no further questions.

MR. WILDES: TO WITNESS: I want to thank you very much for coming .

MR. CAVETT: Thank you.

SIO: All right, Mr. Wildes.

MR. WILDES: I would like to call Mr. Eric Schnapper.

SIO TO WITNESS:

Q Will you raise your right hand, sir. Do you solemnly swear the testimony you will give today willbe the truth, the whole truth, and nothing but the t

truth, so help you God?

A I do.

Q Put your hand down.

MR. WILDES TO WITNESS:

Q Pleast state your full name, occupation, and professional associations or affiliations?

A My name is Eric Schnapper, I'm an attorney, a graduate of Yale Law School, a member of the Bar of California. I am now serving as a Special Assistant to the Chairman of the Committee on Drug Abuse ofthe Young Lawyers Section of the American Bar Association, of which I was chairman in 1971 of the Committee on Election Law in 1970 of the ----.

Q Are you at this point involved in a program in behalf of the American Bar Association in which the Lennons are participating?

A Yes, The Committee on Drug Abuse is the largest in that organization, covering forty States in a program which has been enlarging in the last severa years with the law enforcement agency , the Department of Justice. The most of the committee's work is directed toward getting information about hard drugs and/young people. We have askedthe Lennons if they would be willing to help us and support us, and to prepare radio and television advertising and which we would use in public announcement service throughout the country. We asked them to do that without any thought of compensation and they and we are now involved in implementing that stage of the work through our Chicago staff. Itwill take yet about six months.

SIO TO WITNESS:

Q When you say to support them, do you mean to participate in them, or to prepare the nature of them?

A Our understanding is that they will both record them and help us shape what we feel it is very important and not be just reading scripts, efforts like that in the past have been extremely unsuccessful. It is contemplated they will both take part in the preparation of the ads so that it will reflect their own personal views and that they will when we are settled on the text, they will record it. Our plan is within the time available to do a pilot program for the City of New York. We have been having discussions with the director of addiction services here in New York, and hoping to do a pilot program here first, to make sure that we got a formula for these advertisements that is effective, and then to circulate them nationally, through U .S.A. In addition to that, we in the Association are debating the possibility of having the Lennons to appear at a benefit next year for drug rehabilitation centers throughout the country. Our hope is, but this is still somewhat up in the air, if we can get them to do this throughout the next academic year.

Q How long will that take you?

A We would like them to do it at thorate of approximately one a month, for two months of the three of the academic year remaining.

Q Of 1972?

A Yes.

MR. WILDES: I have no further questions.

MR. SCHAINO: NO questions.

SIO: All right, thank you.

MR. WILDES TO WITNESS: Thank you very much. I would like tocall Mr. James Theresa. (phonetic)

SIO TO WITNESS:

Q Will you raise your right hand, sir. Do you solemnly swear the testimony

FORM I-299
(9-28-65)

you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

SIO: All right, Mr. Wildes.

MR. WILDES TO WITNESS:

Q Will you state your complete name, title, and professional affiliations?

A My name is James HARICHAL. I am director of the Everson Museum of Art, Syracuse, New York.

SIO TO WITNESS:

Q Will you spell your last name, sir?

Harichal

A H A R I C H A L.

Q And the name of the Museum?

A E v e r s o n Museum of Art, Syracuse, New York.

SIO: All right, go ahead.

BY WITNESS: I am also Professor of the Staff Museology at Syracuse University.

SIO TO WITNESS:

Q That's Museology, as distinct from Musicology. That's the study of Museums? Or the operation of museums?

A Certainly. Techniques. I was formerly an Associate Professor in Art History at Hubtor College at the School of Visual Arts, and formerly Director of the Corcoran Gallery in Washington, D. C. I held three other editorial positions and had roughly fifty publications in this field, of contemporary art.

Q Are you familiar with the art works of the Lennons?

A I am very familiar with their art work. Last October, after much effort, we put together with what turned out to be an amazing exhibition of both their work. Yoko was featured inthe work, and John was the guest artist.

and in effect acted as Curator of the Exhibit.

Q Do you plan or have you already made arrangements with respect to any further exhibition of their work for which their presence might be necessary?

A I was thinking about it. I have to answer this in two parts. In the first place, there have been many exhibits since the original exhibition was held. The original exhibition was held in three museum exhibitions which included a great deal of participation among the community, it included artists from the University as well as from all levels as from high school and so on which was organized to present their work also. Out of that we developed a public service program where we have high school students and artists participating and creating works of arts for public places. This is something we have been interested in and we were talking to John about it particularly. And in addition to that, since the exhibition, we developed a program which is art rehabilitation and teaching / which actually got its real beginning since we had very little material at the inception of our program in October. The newspapers published a catalog of the exhibition was the beginning step for this artist rehabilitation program. That's a continuing project , and on which we have both John and Yoko give advice on. In addition to that we have developed a series of neighborhood programs for psychiatric hospitals, programs in what is commonly described as ghetto areas, and so on, and repeatedly I have gone back to John for further information and his advice in these areas, and this area covers also problems like delinquency and prison problems and so on. I requested initially, this was a year ago that John continue on as Honorary Curator of the Museum after the exhibition because of the effects of the exhibition, and subsequently I requested that both of them would continue as resident artists.

His residency would be for one or two days a month, to help them specifically with these problems. I think their presence is absolutely essential.

Q Do you think their work is of benefit to others, to young people?

A There is no question. In relationship to one exhibition we have planned and we have been working on for several months and have been basically dealing with him for a year and a half to two years of exhibitions and shows.

Q What is that exhibition?

A This is SLULUS, and this relates to a very important troupe of artists of which Yoko was one of the principal members, first appearing in the early sixties. The main part of the exhibition was planned by Guggenheim, but unfortunately, was not carried on, and we have taken it up. In relation to specifically this exhibition, we need Yoko's help at every step of the planning. I have always thought of John and Yoko as being essentially together and in all the areas that I have mentioned, their advice and help was absolutely needed, and I would like, and will need their help and advice to be effective in all of the areas I have outlined.

Q Could you specify a length of time during which these dealings ran?

A As I say, in the letter I wrote to them, which unfortunately, I don't have a copy of it.

MR. WILDES: I have no further questions.

SIO: Mr. Schiano?

MR. SCHIANO: Nothing.

SIO: All right, thank you very much.

MR. WILDES? We have, I believe, two or three other people, some of whom I will confine to statements, corroborative statements. I would like to call now on Mr. Norman Seaman.

SIO TO WITNESS:

Q Will you raise your right hand sir. Do you solemnly swear the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q What is your name?

A Norman Seaman.

SIO: All right, Mr. Wildes.

MR. WILDES TO WITNESS:

Q Will you state your occpuation and professional affiliations?

A I am an independent concert and theatrical producer. Primarily in concerts because we run concerts in Lincoln Center and Carnegie Hall, and Town Hall. These are primarily classical concerts. Im a New Yorker, born and educated in New York State, a graduate of City College, completed my work for a Doctorate in American Civilization at New York University and worked as Promotion Director for the Municipal Broadcasting System before entering independent production. Part of the activities that we engage in includes contributing our services in the production of benefits for worthy causes. Most recently, in January of this year, an organization called AWARE CONTACTED US AND INFORMED US THAT THEY WERE RAising funds for this organization which included on its Board many distinguished industrialists, a Deputy Mayor of New York, the Vice President of one of the Television networks, and asked if we could help on it. We contributed our services and one of our main contributions was to invite Yoko and John to participate. In fact I can point out that in about 1961 or so a young artist was introduced to me by the name of Yoko Ono. At that time we were very active.

FORM I-299
(9-28-65)

in introducing the works of new composers, a field we are still active in, I might say, as next week another program of new music, and many of the leading American composers have had some of their works introduced in our programs. In addition to that I might add as a parenthetical insert, we have acted as the New York representatives of the Philadelphia Orchestra for many years, and there too, many important works have been introduced, but we were interested not only in the approved classical end of music but also in the innovative and experimental end . And when I was introduced to Miss Ono at that time I found myself rather fascinated at a lunch that we had in which she showed me the manuscript of a work which she called Grapefruit, which is a little difficult to describe as a piece of music because it was probably one of the first that we had which we call multi-media pieces which was the first that I had ever seen. I might add that many of the developments in the past ten or eleven years in the field of art and particularly in the various inter-relating media, were included in that work Grapefruit, and I decided to sponsor several concerts of her. We put on one or two of her concerts at Carnegie, and we received a rather strange reaction at that time. We found that nobody could watch or react to these programs without communicating. There were those who were violently moved to imply that Miss Ono belongs in an insance asylum, at best and to be given some kind of treatment, and there were others who believed that she had a remarkable depth of imagination and the ability to see beyond the normal boundaries of art as we found it described. Well, I am not going to go through a long.....I can see you looking at your watch....

SIO: No, that was not in connection with your thing. I just wanted to see where we were going in terms of the luncheon break. We don't go on indefinitel in these proceedings, that's all. It was not intended as a critical comment.

SIO TO WITNESS:

Q Go ahead.

A Well, without going any further into her artistic merit, let me say from a review of her concert at that time by Allen Rich, who is now the Music Editor of New York Magazine and a prize winning writer, which indicated, and John Crosby who at that time was a syndicated columist, also wrote it up and both of them wrote it up in terms which implied this was an unusual imagination work. I personally found in addition Miss Ono not only would be an unusual artist but an unusual person, a person who I felt was unusually deep humanity. I met her child at that time, Kyoko, and in the course of the many years she lived here I found that , well she became a valued friend, a personal friend and a very stimulating human being to be with as well as one to be with just socially, and our friendship continued onk, my children got to know her and got to know her child, that continued on for many years. She left for London. We kept in touch and she became engaged and then married to Mr. Lennon. I became privileged to meet Mr. Lennon, perhaps four years ago. Saw them together in various places here and in Montreal and in England and mostly in New York. I am a family man you might say, that is, married and I have a family and my sympathy is of course very very strong with them, not only as a friend and artist but specifically for Yoko as a mother. This is almost like the story we were told would be like a tear jerker, it is an almost unbelievable Stella Da llas story. Mother looking for her child, unable to find her, sitting in a courtroom and being cross examined as to her rights to stay here with her husband, and I might add, that together, it is cold-hearted for me to think of Yoko alone now as I think it is for anybody. They have a most

unusual marriage, one that is integrated artistically, humanly, socially, and just about every possible way. All I can say is that personally I feel very moved and very involved with these two brave intelligent active moral human beings whom I see being harassed and whose wife is being hassled for no reason. These are people who have an enormous contribution to make, who are a great deal of fun to be with.

Q Would you state that a narcotics conviction was no reason?

A Well, there of course I am not qualified to talk about it. I do know this..

Q Well, I am asking you your opinion, sir?

A Well, I would say then my opinion is this. In the area in which I operate there are many people who were convicted on the basis of flakings, that is simply....

MR. WILDES: I regret to interrupt the Special Inquiry Officer with this question, but Narcotics conviction as no reason, that is hardly the area of an arranger and conductor and so on.

Q Well this is a witness that has INTRO duced the concept that this man was being harassed, that they were both being harassed for no reason. I was curious to know what his reaction was.

BY WITNESS: Did I say no reason? I withdraw that. Obviously the government has a reason. What that reason is is apparently subject to a great deal of speculation but that is not my area. I am speaking of as I know them as friends and human beings and as everyone knows.

SIO: Mr. Wildes, I assume that you have discussed with these people the direction of their testimony. In other words, they have testified in a discursive way and I assume it is directed, and you have indicated the area that you are interested in?

MR. WILDES: Yes. I have just one conclusory question to ask.

MR. WILDES TO WITNESS:

Q You obviously had full contact with Yoko with experiences over ten years, and with John, the last three or four. Is it your conclusion that they are persons of good moral character?

A Definitely. I would say that they believe in the family, a view which is not too popular today, and I would say they are almost square. Someone I read said they act like middle-aged people and they largely do. I have seen their day. I have been with them. They get up and they work, they go towork and they work harder and for many more hours than most people do. They (DENIT) engage as far as I know, in any wild or unrestrained activities, as you might imagine or anything of that kind. They are very square people basically, as far as their social and moral behavior is concerned.

MR. WILDES: I have no further questions.

MR. WILDES TO WITNESS: Thank you very much.

MR. WILDES: There is a statement to be delivered by Reverend Williams which will not require testimony and that is from Bishop Moore of the Diocese of New York.

SIO: When you say delivered, you mean hand delivered?

MR. WILDES: Yes.

SIO: Recess for a moment. Resume.

SIO: The letter is from the Diocese of New York Of the Protestant Episcopal Church 1047 Amsterdam AVenue, New York, New York, and it is from the Right Reverend Paul Moore. All right, does the government have any objections to making this a part of the record?

MR. SCHIANO: No.

SIO TO WITNESS:

Q I'm not quite sure what this is. It is apparently a statement of position by the Committee. Is that what it is?

A Yes. this is covered by an affidavit by the coordinator, and a selection of letters, some have names.

Q The only thing I can tell at a glance, Mr. Dewey from this document, is whether the enumeration of - what appears tobe the people who make up the committee - made up the letters. In other words, are they the authors of the letters that follow, or are they members of the committee, and the letters are simply selected letters?

A The letters are selected letters, some with names and addresses. They have been approached to be part of the overall committee. You will find in some cases names and letters, and in other cases, just the names.

Q I don't quite understand what you said when you said - these people who are listed as the National Committee are people who are people who were approached to be on the committee. Do you mean that these people actually form the committee , in the sense that they recognize one another as belonging to the same organization, or are these people who were approached to see if they would be on the committee?

A Well the nature of this group is in fact a number of groups that have formed spontaneously , the petitions that have been sent in by numbers of people and in other cases individuals have simply written in their support an ad hoc committee in that regard and the sole purpose on which everybody agrees is that the persons who attempt to deport John and Yoko are not in the interests of these people.

Q Well, I am not quite clear as to the status of the committee. The letters

I think speak for themselves.

MR. SCHIANO: If I may have just a moment.

SIO: Yes, Mr. Schiano.

MR. SCHIANO: I have refrained from interfering with this part of the presentation. However this is a process of law and not procedure of vote taking or poll taking. It would be as easy for the government to produce an equal number of letters from people with an opposite opinion.

MR. DEWEY: May I comment on that sir?

SIO TO WITNESS:

Q Yes.

A In my more official capacity I have been in charge for five years with looking after the cultural needs of this State. And the expression of concern that has been registered by these individuals overlaps a period during which New York State and New York City is considered by many to rank with Elizabethian England, Renaissance in Italy, Classical Greece as the creative capital of the world, and it is in the interest of those of us who have a firm responsibility in this area to see that those conditions continue and it is in our strongest interest, the creative people of the country, of the caliber of John and Yoko to be part of that, and I could be more specific about the reasons for it.

MR. SCHIANO: I don't want to engage in argument with the witness.

BY WITNESS: Sir, the Immigration in my understanding is obligated to act in the public interest. In plain simple terms I am here to state that they are not acting in what we construe to be the public interest.

MR. SCHIANO: On thatbasis the documentation is immaterial, irrelevant and incompetent inthe cause of this case.

SIO: Well, certain documentation achieves a weight simply by virtue of size

FORM I-299
(9-28-65)

who is involved. The people who have written here are clearly representative of - are outstanding representatives, or a large number of various artistic fields.

MR. SCHIANO: Would you say the government was representing....

SIO: I agree. No, but it is an indication that there are a large number of artistic people who are interested in the Lonmons.

MR. SCHIANO: Does that deny the disability of the...

BY WITNESS: The government is speaking for us.

SIO TO WITNESS:

Q I beg your pardon?

A The government is presumably speaking for us, and we are here to say that we are being misrepresented by the government inthis case.

BY MR. SCHIANO: That's a further argument for me. Objection.

SIO: Yes, Mr. Schiano: Objection?

SIO: All right, I'll accept this for whatever it is worth. As I say it can't be ignored, I am not entirely sure, Mr. Schiano whether it is strictly relevant to the issue. When you speak of the Immigration Service and the Immigration law, acting as a public benefit, it is charged with the enforcement of the immigration laws. The immigration laws may not coincide with your concept of the public benefit, and there may be a disparity between what you conceive of as the public benefit and what the immigration law says. I don't think the immigration law can be administered simply for the broad concept of the public benefit. It has to be administered in terms of the law itself. What the law says and where the law gives discretion, then the public benefit may enter in to it, but I will take your material and make it part of the record and it will be Exhibit 16.

BY WITNESS: I have this supplementary material.

SIO: TO WITNESS:

Q You realize this is a tremendous amount of material. Supplemental in what sense?

A Additional.

Q Why don't you let Mr. Wildes take care of the supplementary material, and if it becomes necessary he will submit it to me.

A But, I'll hold it until such time as he has seen copies of the others.

MR. WILDES: And if I see any connection and wish to, I will submit it.

MR. SCHIANO: We want to keep this as a trial and not an election.

SIO: All right, thank you Mr. Dewyy.

MR. WILDES: I have only one further witness, in behalf of my clients.

SIO TO WITNESS:

Q Will you raise your right hand, sir. Do you solemnly swear the testimony you willgive today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q All right, put your hand down.

MR. WILDES TO WITNESS:

Q Will you state your full name, your occupation and pour businessand professional affiliations?

A My name is Allen Klein. I am the President of Acaco Industries a Management firm which represents the Lennons.

SIO TO WITNESS:

Q What is that company?

A A c a c o.

FORM I-299
(9-28-65)

SIO: All right.

MR. WILDES TO WITNESS:

Q What is that?

A And to that extent I am biased.

Q In addition to your business relationship have you had an opportunity to have a personal relationship with them? A personal acquaintance.

A I have known both the Lennons for three and half years. I Consider myself a constant friend. When I say constant I mean I would say that in a normal relationship as though we had known each other all our lives. I consider myself a friend of both of them. I have sat and listened to a host of credible witnesses speak of their artistic worth and I am embarrassed because I think that is self-evident, so if that particular matter is a question of fact now , their merit and ability is noted, I would like to go on to some think which may be of less importance in an artistic sense but to a lot of hungry people it is kind of important. The Lennons extensive holdings and interests in the United States, and their businesses do an annual gross volume of fifty million dollars, and as such because this money does not just come in passively, a hundred to a hundred and fifty families are dependent upon them for their livelyhood. This does not mean that if they did not live here these people would not be employed, but were they not happy they would cease to work . So it stands on its face the economic benefit to this country is great and would continue to be great or maybe greater if they were allowed to live here and watch over their intedests. There are two other matters which I would liketo touch on. The first is the question which was raised by Mr. Seaman and then some one objected to, and that is the relevancy of this particular proceeding with regard to anything and you rightly said, well, what about the conviction?

SIO: It will be entered as Exhibit 14.

MR. WILDES: I have one or two more, they will be very brief. I have scheduled after lunch.

MR. WILDES: Mr. Dewey.

SIO TO WITNESS:

Q Will you raise your right hand sir. Do you solemnly swear the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q All right, put your hand down.

MR. WILDES TO WITNESS: Mr. Dewey.

Q Please give us your name, your title, and professional affiliations?

My name is Kenneth Dewey I am an individual artist. For three years I was director of Research and Program Developmentfor New York State Arts Council. The last two years I have been one of five gubernatorial appointments to an eleven member State Commission entitled New York State Cultural Resources Commission and am presently Chairman of the Committee for John and Yoko.

Q Have you in your capacity as the Chairman - forgive me. Would you state what is the National Committee for John and Yoko?

A This is a spontaneous network of concerned individuals in the arts, education, religion, from labor, who have felt that the action being taken against John and Yoko at this time are not in their interest.

Q Have you in that capacity made a statement in writing to present, and a communication from the members of your association which you have attached to the statement.

Allen Klein Pres of Apple Industries
5/12/72

BY WITNESS: (continuing): The event of Mr. Lennon pleading guilty in court, occurred prior to my meeting him. But when I did meet him and because he wanted to travel to the United States, I become personally involved, and I went through the files, and met with the lawyers who represented him in England. And the fact of the matter, which is documented in the lawyer's files, was that Mr. Lennon's position at the time that the police came to his personal house was that whatever substance was found there was not his. And his concern was that his soon to be wife Mrs. Lennon, might be charged as a non-resident alien and be deported. In his words to the detective, which are documented, were: "If I say that it's mine, will you leave her alone?" And they said: Yes. And because his legal representation said to him that this was something that would be handled with a small fine, he pleaded guilty. I think, not realizing the consequences of his inability to travel for instance to the United States. That's why the question of the conviction or his pleading guilty to something which he did not do merely to avoid what he thought might be a more difficult problem is hard for me to reconcile with all of this amount of energy and time and money which is spent. The detective who made the arrest was one who also arrested. .....

MR. SCHIANO: IN the interest of saving time the guilt or innocence is not the subject of this proceeding.

BY WITNESS: I beg your pardon?

MR. SCHIANO: I don't think we have to go into the conviction ...

SIO: Well just a minute. What did you mean before when you say that this is documented?

MR. KLEIN: Mr. Lennon's lawyer has a file. Thestatements which were made by him to the police are in his file, and this information was made available to me. which I saw....

SIO: Do you mean copies of official statements which he gave in connection with the prosecution they had in England?

BY WITNESS: It's an official statement. the statement to his lawyer, yes, that's right.

SIO TO WITNESS:

Q Statement to his lawyer?

A Yes, sir. I don't say it is legally relevant but I say morally it might be.

Q All right, I have no objection to hear about it. It sheds some light on it. I don't think it has the effect of disturbing the conviction. In other words, Mr. Wildes has indicated that he is attempting to get competent legal Counsel in England to set aside the conviction. That would seem to be the appropriate area in which to exercise these efforts because certainly I can't do anything about it. I will not refuse to recognize the conviction where the English court thought itself in a position to sustain a conviction, but I will listen to such matters.

A I was leading to this. The question of the detective I brought up is one of thereasons that the appeal cannot be lodged . The information, the new information which we are waiting to get is the subject of this investigation by the Review Board in England as to his conduct and we can't file the appeal until we get this information which is the subject of this investigation till it's concluded, and the findings are published, we won't have this information. In any event, and I won't belabor it, but the same gentleman did the same thing to Mr. Jagger and Mr. Richards who I also represented at the time and the court of appeals threw out that conviction. I was not involved with Mr. Lennon, I would have never let him plead guilty at that particular time. In any event, that's the idea of this, and I call it a

technicality because if a man pleads guilty to something he is not guilty of morally he is not guilty, maybe legally he is. And I am approaching it on a moral basis since I am not a lawyer.

MR. WILDES TO WITNESS:

Q Mr.Kline to get back to the point of your personal relationships

A I will, it was just an aside, that Mr. Seaman didn't have the personal knowledge of. IN any event there are just two more matters I would like to dwell on. The first is the question of Yoko and her child,and John. I personally, and you can sit and you can talk about it, you can verbalize as to the remorse and every one can feel sorry in a vicarious way, but you have to be there and you have had to travel with them as I have around the world, searching in the outposts of Denmark or Jutland or in Majorca and sitting and trying to reasonably work out an arrangement where she could see her child and be thwarted and frustrated, each time using these same legal means that are now being used against her, and finding her to be emotionally and physically ill by it. It's easy to talk, but it's very difficult to sit and look and listen and the effect in my judgment, since I know them and Tommy Cox, and I have tried very hard to reason with the man, their being deported would be in effect a separation, the mother would never get the child and I don't ever believe this is the intent of the country of which I am a citizen.

SIO: TO WITNESS:

Q How does Mr. Cox make his living since he appears to be continually fleeing?

A He's a wonderful promoter. I really don't know. I think - one of the interesting things is that Mr. Lennon and Mrs. Lennon both appeared before a judge in the Virgin Islands, gave testimony and the judge determined, based upon this testimony that Mr. and Mrs. Lennon were fit and proper people to

bring up this child. Mr. Cox, then went and took residence in Texas, where he never lived before, said that he was going to be a resident there and that is where the child would be brought up. And Mr. and Mrs. Lennon, picked up and went to Texas, even though they had already a decree, and Mr. Cox, when the Judte set down and allowed him temporary visitation - excuse me, temporary custody, and awarded temporary visitation to Mrs. Lennon, the man absconded and there is now a warrant out for his arrest. Now it's not a question of - He was already held in contempt of court and had been jailed. It's not a question of two reasonable people looking for a happy way to live with one child, it's a question of one human being who not only has no concern with the feelings of the mother, but has no concern for the court. We have an award from the Virgin Islands, We now have an award from Texas, and the man flew the jurisdiction. It's a question of frustration, and now at this time, to using this as a ruse to stay here, it's really not so, really ludicrous. It's really not so. John Lennon never really wanted to come to New York, he really didn't like it here. It was only because of Yoko and her quest for the child that he came here and now he likes it and he loves his wife and he loves her child and so to separate them I think is not really human and that woman who stands inthe harbor with her torch certainly - I don't think would want to exclude these type ofpeople. One other thing, and it's a question of humanity. Everyone was talking about whatthey would do in the future and how they - how the Lennons could help with this and could help with that. A year ago, I mean three years ago, the Lennons began a campaign for peace when it really wasn't very fashionable, and an enormous amount of ridicule was heaped on them, much as that man who pointed his finger at the money lende in the temple. And the questions, well what is it really all about and what

does it have to do why don't you do something, and unfortunately the subtleties are lost sometimes on the media and sometimes on the general public, but it wasn't lost on myself or on George Harrison or on John and Yoko and last year a concert was put together to benefit the people - the children from Bengladesh and it was a concert sponsored by me. and it raised more money than any country had ever given just to help children, now that's a positive thing. Just on that act alone they should be granted citizenship. That's a very positive thing. It inspires. If you wouldspeak to the people from UNICEF they had more calls from concerned human beings, concerned young people, who become involved in helping other young people, and I don't believe that that is the way you treat someone who has done that. In the second week in June, the highest award that UNICEF gives, it is called the FATHER OF THE MAN. It is to be given to the people involved with that concert, and I would say the idea of - I would say - grand gesture. The first time something positive really was done and raise as much money for young needy children. That had to have a good effect on the people whom he is supposed to be influencing. It had a good effect on me, and I am only one. I have lived with them.

SIO TO WITNESS:

Q What was their participation in that?

A We were a company which put it on. They generated the interest. In 1969.

Q They didn't actually participate in the performance?

A No, they were in the Virgin Islands in the court case.

Q I see.

A But it was their company, it was their company's money. It is 25% of his which is going. That company invested a great deal of money. He was involved. I spoke with him. And it was for that reason I had gone to UNICEF.

because in 69 they had put on a concert at the Lyceum for UNICEF, and the purpose and the idea of not becoming political in helping a particular country versus another country but picking out children who no one could be against as the source and the recipient of the charity was the reason. I have been with them on a constant personal basis. I have been to Mr. Lennon's house in England with Mrs. Lennon and with their children. It just doesn't make sense that people who give so much to humanity and who have given so much of themselves should be denied what had they not been what they are, they probably would have been given.

MR. WILDES: Have you finished?

WITNESS: Yes.

MR. WILDES: I have no further questions.

SIO: Mr. schiano?

MR. SCHIANO: In regard to the charity, do I understand you to say that if they gave no money, had no money, were not famous did not do anything, it would be all right to deport them?

WITNESS: No, I said you wouldn't deport them. They wouldn't be here.

MR. SCHIANO: That is your opinion.

BY WITNESS: That is MY opinion, RIGHT.

MR. SCHIANO: However erroneous.

BY WITNESS: And I am sure, shared by millions of people.

MR. SCHIANO: Not by the records of the Immigration Service.

SIO: All right.

MR. SCHIANO TO WITNESS:

Q Now, when Mr. Lennon came here you were instrumental in their coming here?

A Yes, I was.

Q At that time you had to seek a waiver of their inadmissibility on account of the conviction?

A Yes.

Q At that time did you tell the American Consul that Mr. Lennon was in fact innocent?

A Yes, I did.

Q Did you state this in writing?

A No, no, I told my Congressman who helped me. That's one of the reasons he helped me.

Q Not in any of the papers which you submitted did you say he was innocent?

A Nor was I obligated.

Q I see. You did notadvance any argument, you accepted the fact that there was this inadmissibility and to please grant a waiver so he may come for business reasons to see you?

A That's right.

Q Did you file the tax returns for Mr. Lennon during this past three years?

A His taxes? They are filed in England.

Q For the United States?

A Yes. Not for Mr. Lennon, for the company that he owns, certainly.

Q But not for Mr. Lennon?

A He wasn't a resident of the United States.

SIO TO WITNESS:

Q Well is it your position, or is it your tax lawyer's position that a man who is not a lawful permanent resident of the United States does not owe any tax obligation?

A

Q Answer my question sir. Do you know if it is the position of your tax

attorney that a man in Mr. Lennon's position does not owe any taxes to the government of the United States?

A You are asking a question that I find difficult to answer.

Q Well, you are intimately concerned with the business and presumably with Mr. Lennon's personal financial affairs. What I am asking you is is it the position of your tax counsel that Mr. Lennon owes no personal income tax to the United States government because he is not a permanent resident?

A Oh, no.

SIO TO RESPONDENT:

QDo you pay a personal income tax Mr. Lennon? To the United States government?

A I don't know. I don't think so, just company tax I guess. I don't really know about it.

BY MR. WILDES: I don't think we are talking here - we should be talking to the tax attorney.

SIO: Well I thought Mr. Kleinwas familiar with it.

MR. KLEIN: Well he does when he performs. I don't think that you will find that he had a performance here for money.

MR. SCHIANO TO WITNESS:

Q He earned no money at all those past three years in the United States?

A He earned money which is derived from agreements which are for and for services which were performed outside of the United States.

Q And nothing in the United States? He made no money in the United States?

A You are asking a question which really, is like when did I stop beating my mother.

SIO: All right. I would like some statement. I assume he has tax counsel, and

I would like some statement from tax counsel, first, as to whether, and this is in relation to both of you, whether they have filed income tax returns to the United States during the time they have been here, and if not, whether it is the opinion of counsel as to what their tax situation is, whether they have such an obligation, and if not, why not.

MR. WILDES: We will be pleased to do so.

SIO: All right. We are going to have to continue this. Mr. Schiano I assume you will get whatever relating files there are, relating to Mrs. Lennon. Now, if the question of abandonment of residence is going to be an issue, I would like you to prepare that in a summary way, or at least to go over with your clients. I would like you to prepare with your client, exactly what her immigration history has been. It's probably on the passport. In other words, the passport... You have gone over it , have you?

MR. WILDES. The passport is my reason for this.

SIO: Well, if that is the issue we are going to go into it and you might as well prepare for it in advance.

MR. WILDES: We certainly shall, do the best we can on that.

SIO: All right, we'll adjourn then till Wednesday morning at the usual time.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF

1) John Winston Ono Lennon
2) Yoko Ono Lennon

Respondents

FILE 1) A17 557 321 - New York
2) A19 459 154 - " "

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Before Special Inquiry Officer Ira Fieldsteel

Continued
Hearing held on May 17, 1972 at 20 West Broadway, New York, N. Y.

Recorded by Dictabelt Transcribed by P. J. Killela

Official Interpreter none used Language English

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I hereby certify that to the best of my knowledge and belief the following pages numbered 74 through 114 are a complete and accurate transcript of the above-described hearing.

Signature
Special Inquiry Officer
Title
7/25/72
Date

Form I-297
(Rev. 3-25-65)

GPO 934-426

BY SIO: Before we become enmeshed in the proceedings, there are a few things a few loose ends I want to tie up. How about the good copy of the 1965 Act? Do you have that Mr. Schiano?

MR. SCHIANO: I got a dalated copy that does not contain all of the sections, and the question came up as to the regulations under the 64 Act. In reading of the 65 Act shows it was an Act to consolidate Dangerous Drug Acts of 1951 and 64, and the repeal and savings clause says that every regulation previously made continues. And that was the descriptive phrase contained in the conviction record relating to Dangerous Drug # 2, Section 2 thereof. I offer both. Counsel has copies already.

MR. WILDES: Yes, I have copies.

SIO: All right, do you have them now?

MR. SCHIANO: Yes.

MR. WILDES: Since neither counsel for the government nor I are expert in English law I intend to request some time within which to submit a brief, if I find that there is anything missing there that needs to be elaborated on, I will submit that in my Brief.

SIO: That's perfectly all right. All right, then the - Mr. Schiano, you have given me the regulations under the Act.

MR. SCHIANO: Right.

SIO: And one of the things I asked for originally was a good photocopy of the Dangerous Drug Act of 1965, so that we wouldn't be missing any section of it. That's still open.

MR. SCHIANO: Well, I'll have a facsimile made up so it will be readable.

SIO: All right. One way or the other. I know it's not a big matter, but the fees haven't been paid on the application. I want the fees paid later.

BY SIO: Am I correct in my understanding that Mr. Lennon was admitted on a request for a waiver and a grant of a waiver by the Service?

MR. WILDES: That's correct.

SIO: I would like that for the record also.

SIO: All right, the application in advance of the waiver will be made part of the record as Exhibit I think it is 13, no, 14.

MR. WILDES: I believe the exhibit is only the grant of the waiver.

SIO: Well do you have the application? Do you want to make the application part of it?

MR. WILDES: I have never seen the application.

SIO: Do you have it?

MR. SCHIANO: I can search it out. I don't know if it is relevant.

MR. WILDES: We would not request it.SIO:

SIO: I notice in examining the application that the prior marital history was fairly complicated. Have you prepared a documentation on the prior marital history to show that it's clear now. Or does the government have it?

MR. SCHIANO: I don't have it.

MR. WILDES: I have the marriage certificate.

SIO: Well, the marriage certificate is only one point.

MR. WILDES: The fact that there is a file including an immigrant visa in behalf of Mrs. Lennon.

SIO: Well I can't tell from the application what the sequence of events was. In other words, was there one marriage prior to Mr. Cox?

MR. WILDES: Yes.

SIO: There was one marriage prior to Mr. Cox, and that marriage was terminated?

MR. WILDES: by a divorce.

SIO: By a divorce, well I would assume that was gone into at the time of filing the visa petition with the 64 arrival.

MR. SCHIANO: There is no documentation as to the divorce. There was mention made thereof.

SIO: It wasn't documented at that time?

MR. SCHIANO: If it was it must be contained in the visa itself or the visa application.

SIO: Was there a visa petiton filed in her behalf at that time?

MR. SCHIANO: Yes, by Mr. Cox. They talk of a prior marriage but the dissolution of that prior marriage was not documented. As far as I can see from the visa fider.

SIO: Well I think it ought to be documented, but it doesn't have to be documented here. Are you in a position to obtain it, Mr. Wildes? Have you discussed this with your clients?

MR. WILDES: We can certainly obtain it. I can't tell how long it might take, and I think perhaps on a closer look at the government's old file in connection with the visa they might have actually had it because it was a necessary part of the procedure for the visa petition.

MR. SCHIANO: It might have been the procedure to exhibit it. In any case, and then return it.

SIO: In any event that's one of the open ends.

MR. SCHIANO: It was exhibited and returned.

SIO: Does the file so indicate?

MR. SCHIANO: Divorce decree of beneficiary was exhibited and returned.

SIO: Then I am satisfied, if the Service was satisfied at that time I am certainly satisfied, as to that. Then there would still be open thedivorce

decree from Mr. Cox.

MR. WILDES: That we can make available.

SIO: And Mr. Lennon's divorce decree or what ever it was.

MR. WILDES: Mr. Lennon's prior divorce decree we will obtain from England.

SIO: All right now my recollection was that at this time we were going to go into the question of the abandonment ofresidence. Is that correct, Counsel? And Mr. Schiano?

MR. SCHIANO: Yes, but before that there is another statement I would like to make inregard to this ttial proceeding.

SIO: All right, go ahead.

MR. SCHIANO: You have here photocopy of the legislative history concerning the admentment when it was put into the exclusion and deportation provisions of the Immigration Act as well as the Section in Narcotics Control Act which refers to a definition of Marijuana, and I do wish to make those observations. While I do reserve my right to cross examine Doctor Grinspoon, I think it will become unnecessary if Counsel will concede me certain points from the very book offered by Doctor. The substance Cannabinol.....

SIO: Do you have the page number?

MR. SCHIANO : It appears throughout the book. Itspresence in the various parts of hhe plant attached in a more concentrated form in the resin or extract thereof. You will recall in my exaination of him I tried to get at this question of how Hashish was regenerated from the extract or the resin, and that being convicted for a cannabis Resin would appear to be a conviction for a more intense form of the hallucinogenic agent, in distinction to what is referred to as the otherparts of the marijuana plant, and it naturally is the argument of the government that it could not have been intended that a conviction for a milder form of the hallucinogenic agent would bar someone

actually convicted for the more intense form of the agent. I do have the legislative history which referred tothe amendment of the Narcotics Control Act, the Narcotics Control Section which the term marijuana has the meaning given to it by a certain section of law and the term marijuana as defined in that section of law. If it is not clear I will have a copy made.

SIO: Well you are going into the interpretatioj of the law, and I think Mr. Wildes asked originally at the outset of this hearing for an opportunity to brief the general question and I am sure this will be included as part of the brief. I think it is something which is more appropriately belongs in the brief. I have no objection to taking any material that you have, but I don't want any extended argument at this time. Put it all inthe brief.

MR. SCHIANO I just wanted to make it clear that certain distinctions may exist in botany but not necessarily in the law.

SIO: All right, What next?

MR. SCHIANO: We will proceed with Mr. Lennon onthe application , or with Mrs. Lennon on the application.

MR. WILDES: Well, before proceeding, I have two statements of witnesses that I have secured in an effort to comply with the Sepcial Inquiry Officer's request that we keep the number of witnesses limited and I should like to hand them up.

SIO: Show themto Mr. Schiano, please.

6

MR. WILDES: The first is a statement by William David Hornsb y Gore, Baron Hardwicke and known as Lord Hardwiche and a former British Ambassador to the United States add a member of the House of Lords, a former member of the Parliament. The second is a statement from the Mayor of the City of New York which is an original letter, and containing the same content as his letter.

to the Commissioner of Immigration which he requested that we make a part of the record, I believe that a copy of this letter is in the government's file.

MR. SCHIANO: I don't know.

SIO: Was that incorporated in the sheaf of material you handed to me with an exhibit. There is a letter in there from the Mayor and I am not sure this is not the same one.

MR. WILDES: No, this is an original.

SIO: All right they will be made part of this record on the same basis as the other letters.

MR. WILDES: I would also like to note although I am not offering this in evidence, I am in receipt of ten to fifteen thousand signatures on petitions which have been completely spontaneous action onthe part of a group in New York and on the part of a group in California. I certainly am not going to burden the record with it, a monstrous pile of documents, I wanted to mention it though because apparently a great number of people have taken it upon themselves to show their interest in the case without even having been requested to do so.

MR. SCHIANO: The government has also withheld a montrous file of letters and I think it is in disagreement with this monstrous pile.

SIO: Let's say the matter has stimulated a substantial public interest.

MR. WILDES: I would also like to know if the testimony which has been given and which will be given today by the Lennons, is given in support not only of their primary application and their real desire and that is to become residents in this coundry or in the case of Mrs. Lennon, toremain a resident. But also in view of the fact that the law requires me to make all my appli-

cations for discretionary relief at this hearing, in support of the secondary application for voluntary departure in that I hope that the evidence given by all the witnesses be considered in each specific case especially since we have no objection to the rendering of separate decisions. With respect to Mrs. Lennon's case I might note that it is our desire that we stablizize her status and it would make no difference to us and we would be willing to accept as a final order and waive our appeal whether the government reconfirms her original residence granted in 1964, whether it is granted a waiver, perhaps under Section 211(b) retroactively, to show that she returned as a resident, or whether the present application for permanent residence be granted, as a new matter. We'll take any kind of residence you've got.

SIO: Does the government have any position on that?

MR. SCHIANO: Too early.

SIO: Too early, all right. Why don't we get the evidence and let the government make its stand known later. What order do you want to follow?

MR. WILDES: If I may, both my questions relate to both witnesses and I would like to put them on and those questions which relate only to one, I would separate the questions.

SIO: Well, you have spoken to only one witness at a time. Which witness do you want first?

MR. WILDES: Mr. Lennon.

SIO TO MALE RESPONDENT:

Q Would you raise your right hand, sir. Do you solemnly swear the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q All right, put your hand down.

SIO: All right, Mr. Wildes.

MR. WILDES TO MALE RESPONDENT:

QMr. Lennon have you ever been a member of the Communist Party or any other group whose purpose it might be to overthrow our government?

A No.

Q Have you ever been convicted of a crime involving moral turpitude?

A No.

SIO: Counsel, why don't you phrase it in terms of any crime other than the one which is at issue in this proceeding?

MR. WILDES TO MALE RESPONDENT:

Q Other than the....

A ...other than the misdemeanor.... No, sir.

Q ...other than the one which has been referred to, were there any other offense?

A No.

Q With respect to this particular offense at the time of your arrest, were you aware of the presence of any drug or substance in your possession?

A No, I had nothing to do with it.

Q Had you been to the United States on previous occasions?

A Many times.

Q Do you have any idea how many times you were here and under what circumstances?

A Mainly on tour with the Beatles, I guess, was the most times, but in the last few years I have been here many times also.

Q And during all these times have you ever had any formal difficulties - or were any proceedings commenced against you - by the Immigration Service...

A No, nothing legal.

Q All right. ...in connection with your.....

A They let me in anyway.

Q Well did you request and did the government of the United States give you special permission to be admitted temporarily despite the fact of the....

MR. SCHIANO: The government will concede that, it's in evidence already.

BY MALE RESPONDENT: I don't know whether it was a concession or what.

SIO: Well I don't know. I can't tell from this whether there were just this one instance or whether there were other waivers on prior occasions?

MR . SCHIANO: There were prior occasions.

BY MALE RESPONDENT: There were more, quite a few, actually. Because we have been here for the court case many times. From here back to Europe and back again.

MR. WILDES TO MALE RESPONDENT:

Q Are you presently involved in any programs or activities for which your continued presence, or your joint continued presence with Mrs. Lennon, is required?

A Well, there's many many things, from recordings, talent we discovered here to Yoko's own art work which is - and both of us have been asked to do some work in Syracuse where Yoko previously had an exhibition, which was very good, and there's a few universities which is always so, whenever we have been here, but normally we have been tobusy to go and lecture at different universities on the music and art and on things in general. And of course we have the main thing, apart from all our you know artistic endeavors, they are looking for Kyoko, you know we've got many people helping us look for her in this country. She is somewhere in the United States, and that's what we're really doing .

and that's what we have planned for the next --for ever -- till we find her.

Q If the government should determine that you are not entitled to permanent residence in this country and if it were possible for you to secure permission to depart voluntarily, would you do so, within the period of time prescribed by law, and at your own expense?

A Well, let's say I wouldn't do anything that wasn't legal.

Sio to MALE RESPONDENT:

Q I don't quite understand the answer?

A Well, I mean, he's asking me would - you see- I don't know what....

Q Let's put it this way.

A ...I wouldn't do anything he didn't advise me to do. That's what I mean.

Q ... Let's put it thisway. If you are faced with the alternative of deportation or leaving at your own expense,/andif those are the only two alternatives presented to you, would you leave at your own exponse. That's the question?

A ...I see.... well...Yes, I'd be perfectly willing.

MR. WILDES TO MALE RESPONDENT:

Q Is there anything further you would wish to add.

A Only that we understand the legal technicalities are keeping us out of here and we don't know how that applies to a child, butwe understand the problem I don't know if there is any mercy to plead for because we are not in a Federal Court but if there is any, I'd like it please for both of us and our child. That's about it.

MR. WILDES: I have no further questions.

MR. SCHIANO TO MALE RESPONDENT:

Q You have been variously listed as a composer, musician, artist, author, actor, film-maker, self-employed?

A O. K. Yes.

Q Do you own any corporations or companies?

A I own a quarter of Apple Records Inc., or Apple Core, which includes films and records and music publishing, I have bits of publishing and it's very complicated but that's the basic thing, records and films.

Q A group of companies?

A Yes, with an ovdrall title of Apple Core, so I don't know when Apple Core is into something, and there are a few different companies publishing songs for the Beatles and different songwriters, are paired off with different companies butwhich are all connected to the parentk company. There are English versions of each company, and American versions of each company, and that's about it.

Q Was Apple Core originally a British company?

A I guess so. I think it was simultaneously started here and there., virtually.

QWas there Apple Core in Britain---Does Apple Core do business in the United States?

A Yes.

Q And you are a director and shareholder of that company?

A Yes, I think they gave me the title of President of Apple Records.

Q The one in the United States?

A Yes, both countries.

Q And do you receive any compensation from this company either from England - the English version of it, or the American version of it?

A I think evrything I get really has to go to England before I receive it, you know. I wouldn't be sure, but that's basically - here I live on my own capital I make no living here.

Q Have you received any income in the United States from your trip - from your appearances here?

A No. There has been no fees except for appearing on a T. V. show, because of the union, we usually give that away. They have to give you something.

Q A basic $290. For your appearances?

A Something like that.

Q Do you receive royalty from records?

A Yes.

Q Do you receive it from ASCAP?

A I don't know. The lawyer. Oh, ASCAP and BMI - I don't know which is which but they sort of collect it. I don't know whether it goes to England first, or where. I don't know. Can I ask the lawyer? I think it goes to Apple.

Q What is the relationship between you and AVCO or between AVCO and Apple?

A Avco is the management firm which manages , who in turn looks after the Beatles, and on Apple Records.

Q Are your creative efforts sold, I mean your songs, to AVCO or to some other agency?

A Well, see AVCO manages the over all thing, but some deals and things that were set up long before AVCO came in, like a company in England called Northern Songs, and it has an outlet here called Maklin or Len Mack and it has something to do with people I don't even know how. You know, Johnny Cash or someone like that. The song publishing goes to a song publishing company which is set up years ago, which has subsidiaries all around the wor including here. The record royalties go straight to Apple in England, whereas the publishing goes, it gets divided some goes to a publishing company in England, some goes to the Beatles or Paul and I. It's very complicated but you know.

Q If you had any songs today to be exploited, who would do that for you, would it be AVCO?

A Well, I guess the combination of AVCO and APPLE, you know, they are in the same building over here, and there are AVCO employees mixed in with APPLE employees in London, so it's like one thing almost, but they are separate, legally.

Q Do you have a personal business manager?

A Yes, that's Mr. Allen Klein.

Q And he is the President of AVCO?

A Yes.

Q Were you ever paid personally here in the United States?

A NO.

Q Well, when you appeared on the Dick Cavett show, what was that?

A Well they never actually gave me in my hand you know, I guess it gets sent by post.

Q Was it to you or to Apple Core?

A I guess it's to me, you know, I've never looked. I guess it's to me or both of us.

Q Do you have any present contracts outstanding in the United States? With any...

A Well, you see in a roundabout way we have a contract Apple Records has a contract which has the rights to Beatle recordings which has a contract with EM I In London, which in turn has a firm here which is a sort of part of EMI in a way, called Capitol, but it's still an American Company and they lease the records to them, so in that way, and the publishing too, that's over here, I guess in that way it's connected.

Who would know better what the structures are on that?

A Mr. Klein.

Q Allen Klein?

A Right.

Q As far as you know, have you filed any personal income tax returns in the United States?

A I don't think so, because whatever it is I've just got lawyers that do it and it happens naturally and I occasionally sign some of the tax, but I don't recall in signing any tax things for America, no, unless it was a company thing.

Q As I recall the last time your lawyer promised to get a letter from your tax accountant your tax lawyer and present it here?

MR. WILDES: It's not ready yet. I expect to have it within a few days.

SIO: I have a feeling you might better hold off on this until then. This is too complex I don't think Mr. Lennon really understands it all.

MR. SCHIANO: Right, but I do want to reserve my right on that.

MR. LENNON: I don't think the lawyers understand it themselves.

MR. WILDES: I don;t think there is any real question that Mr. Lennon is going to become a public charge here?

SIO: I don't think that's the issue. I think the issue is whether he paid any income tax which is owing.

BY MALE RESPONDENT: I referred to American taxes, that's what you are asking? No? I pay the English tax first, that would be later.

MR. SCHIANO: Well we don't know yet whether there is any tax liability. We would have to wait for the letter from Counsel, and if necessary, Mr. Klein would take the stand again ...

MR. WILDES: Maybe. But Mr. Klein may not be knowledgeable in all of this tax....

MR. SCHIANO: No, but his knowledge of the structure of the organization?

MR. WILDES: I'm certain, but I believe the appropriate reply should be by the expert who manages the tax payments...

MR. SCHIANO: To explain the taxes, yes, but I think we're also entitled to know what the organizational structure is, by which Mr. Lennon can.....

SIO: Well if tax counsel prepares the income tax returns, presumably he knows what the structure is, and vouches for the structure to the government.

MR. SCHIANO: Good enough. Now, without forfeiting any right to examine Mr. Lennon further, or more extensively, since it is the government's position that he is ineligible for adjustment, we do wish to note on the record that should he be declared eligible, we want the right to examine him on the merits of his application. We will not do that now, as we believe it is unnecessary. I think Counsel will agree with that.

MR. WILDES: I would have no objection to that, Mr. Schiano.

MR. SCHIANO: There are just one or two other questions, though.

MR. SCHIANO TO MALE RESPONDENT:

Q You have been very much involved in the finding of Kyoko Ono, is that right?

A Yes.

Q And as far as you are concerned, is she a lost child, a kidnapped child, or what?

A Well, it couldn't be a kidnap case because it's only a civil case and we can't get federal help in that way, so it's not legally kidnapping.

Q Have you sought federal help?

A Well I don't think we have any option there. We actually asked the sheriff in Houston how far can he help outside of his area, but we really have to q rely on private agencies.

Q Have you thought of going to the FBI to help seek out the child?

A Well, I don't think we're entitled to do that.

Q Look , have you done it?

A We've thought of it. NO, we haven't done it. Because we were told it was a civil case and we had no legal right to ask for it, and we have lawyers advising us, and they advised.

Q But you have no objection if the federal government were to take a hand in locating the child ?

A Oh, no, we'd be very thankful if they found her and....

Q You believe as far as the government, you would go tothe FBI to seek people?

A All we ask for is for it to be done quietly so the child not to be made a public spectacle, that's all we're frightened of, is of her becoming a famous child, we don't see why she should have to be.

Q Now, this Mr. Cox, he earns his living somehow, doesn't he?

A Yes.

Q Do you know how he earns his living?

A Well in Texas Court I think it was shown that he had not earned a living in last ten years, you know, there was no sign of anything he ever done. He is called a film producer but the only films produced with with the offices of Miss Ono Yoko.

Q Well at the court in Texas, in Houston , Texas, they stated that Mr. Cos will willing and cooperative in sharing the visitation rights with Miss Ono at least at that time, that was in March of 72, I believe.

A The only reason we were interested is because we had opened a case in the Virgin Islands where the divorce took place because of precisely the

opposite, because he wouldn't let us see her. In the beginning days, we had her, and then he had her, and it was like that, but just one time he ran off and that was about two years ago and we have been chasing him ever since, and he opened the court case in Texas to sort of appeal or something our case in the Virgin Islands, and then when the case went unfavorable to him he - what's that --- contempt of court and the judge put him in jail for five days and then he was let out on bail and then he ran away and he is in contempt of court now. So that's why we thought we would get help from federal people, but apparently that wasn't enough, because it wasn't really a kidnapping, some technicality there.

Q You have no idea where the child is at?

A No the only clue we have is that they were in Texas and that they left Texas with the Sheriff and all his people who were very helpful with us and they couldn't find her and we also had a detective agency down there watching the houses. They wouldn't even tell the court which house they were living in in Texas, and we never did find that out, and we only got a third party's phone number on the order of the judge, which is the only phone call she ever got from the child in two years, and the child was just talking like programmed you know like, turn your face to Jesus mother, he'll never forgive you for what you are doing to me, and that's another fear we have of what the man is doing to the child's mind, you know.

Q Have you heard about the child indirectly through friends?

A No, we hear rumors and we were in Chicago doing some - visiting some friends there ,and almost immediately we got there somebody said KYOKO was seen in a car - going down so and so road with two men holding her and one the mother says, from the description was not Mr. Cox, and we know one thing because we tried so hard, to find her, is if he hasn't got her, nobody

has got her, and even so we followed that lead through and we are still trying to find out what it was based on. Ther's a lot of that coming in so, we follow it all up, and you know there are many little children and she doesn't look particularly Japanese, or particularly American, she could be American she could be Italian or anything, or Mexican or any kind of, you know she doesn't look particularly like any race or anything, so you would think it would be easy to find her because there can only be so many American-Asian children here, but you see, it's not like that.

Q At the present time, for your living expenses, through money that you receive from or through Apple Core?

A Yes, I use my own personal money which is received through Apple Core which is sent over from England. I have my own checkbook here but it's a long delay.

Q Do you own any property in the United States?

A I don't No. Unless I own part of the building, we're in but we probably rent it, you know, but my wife owns a place, oh, I own part of the place that is basically Yoko's. She had a place here which was still under her name until four weeks ago, which she swapped in renting off me and rented another place,

Q Are you talking about your personal residence now?

A Yes.

Q 105 Bowne Street?

A Yes. But also there's another place, but I'm not sure where it is Broome Street. That's the end of that.

MR. SCHIANO: With the reservation mentioned before, I will not now question Mr. Lennon further.

SIO TO MALE RESPONDENT:

Q All right. Thank you.

A Thank you.

SIO TO FEMALE RESPONDENT:

Q Would you raise your hand madam. Do you solemnly swear the testimony you will give today will be the truth, the whole truth, and nothing but the truth, so help you God?

A I do.

Q All right, put your hand down.

SIO: Mr. Wildes?

MR. WILDES TO FEMALE: RESPONDENT:

Q Mrs. Lennon, have you ever been a member of the Communist Party of of any other group whose purpose it might be to overthrow our government?

A No.

Q Have you ever been convicted of any crime whatsoever at any time, anywhere in the world?

A No.

Q When was the first time you came to the United States?

AWhen I was about two and a half years old.

SIO TO FEMALE RESPONDENT:

Q How old?

A two and a half years old.

MR. WILDES TO FEMALE RESPONDENT:

Q And since that time can you give us an idea of how many years you have spent in this country or how much of your life time has been spent here?

A I think it is over half my life that I have spent here in United States.

FORM I-299
(9-28-65)

I'm not exactly sure, actually how many years, because so many times that I have come here, except for the time that this country was at war with Japan.

Q Then you would say that approximately half of your years were spent in this country?

A Yes.

Q Did you attend school here?

A Yes, I have.

Q Do you have any relatives who are citizens of the United States?

Yes, I have one aunt and three cousins, two or three cousins here.

SIO TO FEMALE RESPONDENT:

Q What is the citizenship status of your parents, did they ever become citizens of the United States?

A No, but my brother was born in San Franc isco, so that I think probably..

MR. WILDES TO FEMALE RESPONDENT:

Q Do you think he is probably a citizen?

A Yes, I'm not sure.

SIO TO FEMALE RESPONDENT:

Q Did he renounce his citizenship? Is he older than you?

A No, he's younger than me.

Q So that he would not --are you sure he was not motivated to renounce his citizenship during World War Two?

A Well I think he is definitely - or technically - eligible for citizenship.

Q Well, if he's born in the United States, normally, he would be a citizen automatically.

A Well I don't know what happened because it was just overlapping at the time that we were at war with United States, so I don't know what the technicality at that time was.

Q Is your child a citizen of the United States?

A Yes, she is.

SIO TO COUNSEL: She was actually born outside of the United States but because of the fact that her parents, or her father was a citizen, she acquired citizenship at birth?

BY FEMALE RESPONDENT: Yes, that is true.

MR. WILDES TO FEMALE RESPONDENT:

Q When you were originally divorced from Mr. Cox, was there any special arrangement made with relation to the custody of the child?

A No, there wasn't any arrangement made.

SIO: What was the date of that by the way, When was that? About how long ago?

MR. WILDES: It was in 1969.

BY FEMALE RESPONDENT: Early 1969

SIO: Was that in the Virgin Islands?

MR. WILDES: Yes, probably in January of 1969.

MR. WILDES TO FEMALE RESPONDENT:

Q Did the child reside with you in England?

A Yes, she had.

Q And how did it come that the child left your custody at the time, what happened?

A Well, we had an amicable situation where we both believed that she should have access to both parents and while she was living with us, I allowed her to visit my ex-husband for weekend and then one week end when we were doing the usual weekend visit he suddenly never came back.

Q What had happened?

A They said he left London. And since then I have just been looking for her all over the world. First we heard that he is in Denmark, and then we hear

that they were in Spain, and we went to Spain, then we heard that they were in Hawaii, we heard so many things that we always followed the lead and when ever we arrive in a town because we are famous what happens is that they immediately find out that we are in town and then they leave either before we reach their place or something happens and we can't see her, and this has been going for two years. Now many people think that I am telling to now about my child, these days, which is not true at all. I have been looking for her for two years and it was a very lengthy two years and very strenuous one. The reason why I kept it quiet was because I felt that if I made this issue ♯ public it would affect my child later and she will be hurt and I never wanted to make it public, but finally after looking for her for two years, I took my lawyer's advice and I made it public in that I brought the matter to court.

SIO TO FEMALE RESPONDENT:

Q Which court?

A - I still feel that if I had any choice I didn't want to make it public, because my child, I know that she will suffer later to find out the times we fought over her in court.

Q What do you think charged Mr. Cox's attitude, up to that point he seemed to be sort of amenable and willing to share the custody. Did anything happen to change that attitude?

A I think he felt that the child was getting too attached to us especially she started to develop a very good relationship with my husband, John Lennon, and they were very close to each other and we were having a very good time and I think he noticed that she was being happy with us and that's one of the reasons he chose to scram.

Error in pagination -

Page 96 was omitted in error

Continue on to page # 97

SIO: All right, Mr. Wildes.

MR. WILDES TO FEMALE RESPONDENT:

QNow you stated that you started a court proceeding, was that the proceeding in the original court where your divorce was granted in the Virgin Islands?

A Yes.

Q And I don't intend to prolong this questioning but what was the result of that - did you secure an order from that court giving you custody?

A Yes, I received custody in Virgin Islands, both in Virgin Islands and in Texas Court and especially in the Virgin Islands case, my ex-husband appealed and the appeal was rejected.

Q I show you an order of the district court of the Virgin Islands and an order and opinion of the United States Court of appeals for the Third Circuit. Are these arespectively the custody order.....

MR. SCHIANO: I would like to see the matter just spoken of.

MR. WILDES I respectfully request that they be entered inevidence.

BY FEMALE RESPONDENT: I think this is what it is.

SIO: Yes. Go on, Mr. Wildes.

MR. WILDES TO FEMALE RESPONDENT:

Q I understand that there is another proceeding, from the testimony of your husband, that Mr. Cox commenced a proceeding in Texas. Did you then defend that proceeding?

A Yes.

Q And will you tell us whathappened there?

A Well, The judge gave me temporary visitation rights and because of that I went to Texas with my husband John, and discovered my ex-husband, despite

the court order was unwilling to allow me to see Kyoko. So we had to come back to New York without seeing her.

MR. SCHIANO: no objection with respect to the order of the Texas court.

SIO: All right, the three orders will be Exhibits 15, 16, and 17, respectively.

BY FEMALE RESPONDENT: May I add one thing? It is true that we have hired many detectives and we have asked many friends of ours to look for her but I have received a phone call from my daughter last year when she mentioned that she feels she is harassed by detectives and of course she is intelligent and sensitive and she understands that she is being followed, so I had to cancel several detectives that had been hired, and had to replace them with some people who are more personal friends of ours. I don't want this information to go out of this court because .....

SIO TO FEMALE RESPONDENT:

Q Well, you just can't ask everybody just to keep quiet. You are in a room full of representatives of the press, if they will respect your wishes...

A It's just the reason why I mention this is and I would like to tell you aboutd it....

Q Loo, Mrs. Lennon, you are not speaking confidentially overa desk, you are speaking in a room full of the public and if there is anything you don't want to be made public then just don't say it and I won't pressyou.

SIO: All right, Mr. Wildes.

MR. WILDES TO FEMALE RESPONDENT:

Q Areyou continuing your efforts at this time?

A Yes, we are continuing our efforts.

Q Now your husband John testified to certain property in which you are ~~certain project in which you are both involved. And there was previous~~

testimony of other witnesses as to the nature and duration of these projects. Are these projects which require the physical presence of both yourself and your husband?

A The reasons I want to stay here is not only because of our sentiments for the country and for our search for our daughter, but we have a practical and realistic reason to stay here which is to engage in various projects and we are already engaged in such projects as trying to develop a music library in this city, and this has been something that we have been trying to do for the past year or so, which will be for the use of the poor and it will be a music library which is free for everybody and this is just one example of the things on of the projects that we're doing in this City. We really love it and we have many plans and in addition to actual work which is to record and to write songs and to perform, in fact, if the situation allows us and if it is all right legally, we would like to go on tour. We would have been on tour already if this situation hadn't arisen.

Q In the efforts that you describe to find your child over this two or three year period, has your husband John been with you continuously?

A Yes, and without my husband's constant effort to support me and to control me during these periods of looking for my daughter I don't think I could have gone through the ordeal. It has really been a terrible time for us and it has been especially terrible because we couldn't tell anyone about this and we just kept working because it was important for us to somehow try to make us forget about it, but it was very hard to forget, obviously.

Q Do you consider his continued presence with you necessary in order to permit you to carry on this search?

A Yes. It is very very difficult for anyone I am sure to have to go through

SUCH an ordeal by themselves, but especially in my case I think maybe I am in a sense looking for words and also because of our position, ironically the position we are in puts us - we are considered to be powerful - is actually working against us, and it is a very difficult position to be in. So that it would be very difficult if I don't have my husband's help.

Q Is there anything further that you would wish to add?

A I only hope that you will understand our situation, and about our child and will not consider the technicalities as an important factor of this case. But to consider the circumstances, the humancircumstances of this case and would allow us to stay here to look for her, and in the event we find her, to raise her here according to the custody papers that we have received in Texas Court, : that we are allowed to have her temporarily only on the basis that we would raise the child in the United States.

SIO: Mr. Schiano?

MR. SCHIANO TO FEMALE RESPONDENT:

Q Would you want to become a resident of the United States if your husband's application were denied?

A ----

SIO: Ithink that has already been stated, at least it has been stated by Counsel.

BY FEMALE RESPONDENT: Well, that is a very difficult question to answer.

BY MR. WILDES: We have stated that we are willing to accept separate decisions in these cases, and I think the question puts the parties in a particularly difficult position.

SIO: Well, let's put thequestion this way.

SIO TO FEMALE RESPONDENT:

QDo you think - I am not asking you whether that is the way you would like

it- but do you feel that you were in a better position if you had residence, permanent residence. That's really the question. I know you would like to have both of you have residence.

A Well, that's still a very difficult question to answer. If you are saying that I would prefer to stay her when my husband is deported, you are asking me to choose between my child and my husband I don't think you can ask any human being to do such athing.

Q Madam, if you present an application for residence, you have to be prepared to accept . You can't present the application and then tell me no, I'm not going to take it.

A I understand.

Q I won't press this issue. I don't allow it to be pressed any further, but I assume that Counsel has representatives - has represented that he would like the residence for his client and I would say he is the best judge of where his clients' interests lie.

MR. WILDES: May I say, we feel that Mr. Lennon's residence is an absolute necessity in carrying out the search for the child.

MR. SCHIANO: You recited a sequence of events by which Mr. Cox took your child in various countries. Did you ever catch up with him in any of these countries?

BY FEMALE RESPONDENT : Yes, if ever we were able to find where they were, and we located there they were, and we tried to make some arrangement but it failed.

MR. SCHIANO TO FEMALE RESPONDENT:

Q Was there any trouble with the law there?

A Well, I think that the French government assumed , they saw Mr. Cox had

they thought Mr. Cox had the custody, and they discovered later that this was not true.

Q Did they arrest you?

A They investigated us, yes.

Q Did they arrest you?

A Well, as I said they investigated us.

SIO TO FEMALE RESPONDENT:

Q Mrs. Lennon, the question is very simple. You know what an arrest is. An arrest is mostly when the police come and take you into custody and charge you with some offense or some crime?

A No, they didn't charge us., with anything, they just interrogated us. I don't think that would constitute an arrest.

MR. SCHIANO TO FEMALE RESPONDENT:

Q Just you, or Mr. Lennon, also?

A Both of us. But that was true of Mr. Cox and the child as well. They wanted to know the situation and therefore they have asked us to come to court, both parties, my husband John Lennon, myself, and Mr. Cox and the child.

Q Well, was it like this, that you went to Spain, found the child, took the child and then your husband went and complained that you kidnapped the child?

A I don't know what the exact complaint was, but I think you are putting words in my mouth. All we are saying is that we were asked tocome to court to testify that this was with the intention of seeing the child.

SIO TO FEMALE RESPONDENT:

Q When was this madam? This matter in Spain, before the decree in the Virgin Islands?

A Yes.

Q Do you remember what court it was?

A No, it was in Majorca, somewhere in Majorca, I don't know for sure where.

SIO TO RESPONDENT:

Q In any event, at that time, there wasn't any formal court decree giving you custody, that was based on a mutual arrangement between you and Mr. Xoc, splitting of custody?

A In other words, neither of us, neither Mr. Cox, no I, had a decree.

Q I understand, all right.

MR. SCHIANO TO FEMALE RESPONDENT:

Q And that court in Majorca had you return the child to Mr. Cox?

A Yes, I have.

Q At that time, the court says, the child stays with Mr. Cox.

A Well, the court advised us so on the basis of Mr. Cox' testimony, that he had the child's custody.

Q You came here as an immigrant with an immigrant visa in 1964, is that correct?

A Yes, that's true.

Q Did you become employed in the United States then?

A Yes, I have worked for the Japan Society who asked me to represent them and to go to various institutes, art institutes and lecture about Japanese Art.

Q Since 1964 did you file any personal income tax returns?

A Yes, I have, whenever there wasany income, made, I made sure to file an income return.

Q For 71?

SIO: What's the question?

MR. SCHIANO TO FEMALE RESPONDENT:

Q Did you file an income tax return for 1971?

A 1971.

SIO TO RESPONDENT:

Q The question is did you file one for 1971?

A Before 1971? For that you have to ask our lawyer, because we have twenty lawyers you know hired for that purpose and Ireally don't know anything about it.

Q Do you remember signing anyIncome tax returns in the past five years?

A I really can't answer that question, because I don't remember.

Q Did you live in England for a while?

A Yes, I did, but one thing I must say is that I alwaysthought New York City was my home. And to prove that I can give you lease that I have kept my loft in New York since 1960 until this year when I have finally given up that loft anbd to exchange it for another, a better loft actually in the street that we previously mentioned and I bought that loft.

Q Do you have any homes or apartments in England?

A Yes. We have a house in England.

Q In Sittinghurst?

A Yes. It belongs to my husband.

Q And do you live there with your husband for a while?

A Yes, we have.

Q During what period of time?

A From 1969 to 1970.

Q And in the past several years, at least since 1969 1970 whenever you came to the United States you applied for a visitor visa is that correct?

A Yes, that is correct.

Q And you applied for several extensions while you were here, isn't that correct?

A That is correct.

Q I have copies of two letters. One is addressed to Mr. Lennon and one to Mrs. Yoko Lennon. I show it to Counsel and ask that it be made part of the record.

MR. WILDES: Perhaps if Counsel would indicate the relevance of it , I would be better able to...

MR. SCHIANO: It's on applications for extension. During this period of time...

MR. WILDES: The witness has already admitted that she has made such applications.

MR. SCHIANO : I think in disposing of the application itwould be relevant.

SIO TO TRIAL ATTORNEY: Isn't there any way in which I can get a complete picture of where Mrs. Lennon has been living before 1971. You know the normal approach to this type of issue. I want to know after she was admitted in 64, when did she leave, how long did she stay out, where did she go, what did she retain inthe United States perhaps other than this apartment.

BY FEMALE RESPONDENT: The only issue is....

SIO: I am talking to your lawyer, just a moment.

SIO: Did she maintain any ties, here. Did she have a bank account here. Did she have, let's see, the child was born in 63. Where was the child during all that time. There are lots of complex issued involved in the question of retention of residence. I don't have any of that yet.

MR. SCHIANO: I have been trying to develop it, perhaps indirectly because

there has been no development under testimony given through Counsel, nor was any documentation offered.

SIO: The child was born in 63.

MR. SCHIANO: Does she have any passport?

MR. WILDES: We'll be pleased to. At this time unfortunately, the only passport we have in our possession was one issued just about a year ago, and we are at a loss because before that time, apparently she travelled on her Alien Registration Card, before the marriage to Mr. Lennon which was in 69, and we do not have accurate records, although she believes she was here.

SIO TO FEMALE WITNESS:

Q Did you always use the same - - did you always use a travel agency? Or did you just get a ticket whenever you want?

A No, no agency. I don't remember the exact year, but all I can say is that I have been here every year, at least once a year.

Q But for how long, for how long a period?

A It varies, and the only residence that was under my name is the one that is in Chambers Street, which is in this city, and that was the only residence that I have. Other than that any residence that I had in London was not a permanent one and anything permanent belonged to my husband.

MR. SCHIANO: I don't mind deferring to Counsel, if he wants to develop this line of questioning and would want a recess for that, but it has tobe developed either by Counsel or by myself.

SIO: I agree. I just want to know who is going to develop it. If we are going to continue this hearing another day. You see this is what I suggested at the last hearing, that you get togetherwith your client and that you go over it, it's a very laborious and unpleasant task ...

MR. WILDES: Unfortunately my client does not keep records.

SIO: All right. But there are other sources of information other than her records. Maybe she had a bank account during the time. Maybe she paid taxes in England. I don't know what the story is, but in order to press the claim of retention of resid ce we have to have some picture of where she was between 64 and now.

SIO TO FEMALE RESPONDENT:

Q How long did you stay after you got here in 64?

A Until 1966.

Q You were here continuously from 64 to 66?

A Yes, your honor.

Q And when you left in 66 where did you go?

A I went to London.

Q Did you take the child with you?

A Yes, I have.

Q Now when you went to London, how long did you stay in London?

A I have been to many places other than London of Course, it wasn't like I was....

Q But how longwas it before you came back to the United States?

A I had been moving around and I really don't know I just have to make sure about it and check the records or whatever, because I really have no recollection.

Q When you left in 66, madam, did you apply for a reentry permit, do you know what a reentry permit is?

A —

Q A reentry permit is something that a permanent resident of the United States applies for and gets when they are about to leave the United States

with a sort of indefinite time of return. In other words, a time that might extend beyond the time for which the green card is valid. Did you apply for such a permit do you remember?

A Well, —

Q If you don't remember, say so.

A I really don't remember. I am sorry. Because you see when I went to London I originally went to London thinking that I would only stay there for two weeks, and go to Paris which I did. I went to Paris I have been to different places and it wasn't as though I was staying in London all the time.

MR. WILDES: If I may suggest, perhaps if we took a recess, I might be able to organize this, or...

SIO: Well, are we going to finish today, or are we not going to finish today.

MR. WILDES: To my mind the only open issue as to whether or not the old residence continues to this date. I have concluded the presentation with respect to discretionary relief. The government has concluded its presentation....

MR. SCHIANO: NO, no....

MR. WILDES: With respect to deportability.

MR. SCHIANO: Yes.

MR. WILDES: Except for the possibility of recalling Mr. Lennon, should you feel that he is eligible to adjust, statutorily.

MR. SCHIANO: I haven't questioned this applicant fully yet. I'm just beginning that on this issue and on other issues, and if there is a recess it might be discussed with Counsel at the bench.

SIO: Counsel has already made clear his position that really with regard to Mrs. Lennon, he doesn't really care how she gets her residence. In other words, he doesn't care whether she gets it under 245 adjustment or whether.

she gets it by a recognition of the earlier.

MR. SCHIANO: But he did put that into issue and I must deal with that.

SIO: Well I don't knowwhether it's an issue or not. I mean he may be just responding to my questions.

MR. SCHIANO: No, he put into issue the fact of a continued residence and I must deal with that claim of residence.

MR. WILDES: Well I would be perfectly willing as I say, to accept residence under the new application if that clarifies and eliminates all of this testimony. I am not at all interested in going through something that perhaps we cannot adequately prove one way or the other because the records may not be there and may take in a long period of time.

SIO: Why don't you proceed Mr. Schiano with questioning on the merits of the 245, and if there seems to be no ... What?

MR. SCHIANO: May I suggest a recess, and then join counsel at the bench for certain aspects of that. Ten minutes is all it would take.

SIO: All right, I have no objection, to the recess. I am just saying that consulsation at the bench is not quite as private as it might be underthe circumstances.

MR. SCHIANO: All right in chambers.

SIO: In chambers, all right. We will have a ten minute recess. Ten minutes?

MR. SCHIANO: Fine.

SIO: Let the record reflect the hearing is resumed after a short recess. What is it, Mr. Schiano?
To verbalize

MR. SCHIANO: /The effect of the recess, Counsel and the government felt agreed counsel may withdraw the claim that residence acquired in 1964 continued, without prejudice that should she be found ineligible for adjustment, then have the case continued to press that claim.

MR. WILDES: In view of the obvious difficulty in getting all of the information involved we are willing to forego that claim temporarily , and if she is granted residence I have no objection and would be perfectly happy with that, a simple clean application.

MR. SCHIANO: If the application is made in proper context the visa should be necessary.

MR. WILDES: I have no objection that the original visa be placed in evidence.

SIO: I will ask the government to do the usual processing which will involve a check of the police records, medical. Have we ever checked the records of the American Consul in Japan, Mr. Schiano?

MR. SCHIANO: N O , the nonimmigrant visa , they would be checked. As part of the processing there would be some documents stipulated from Counsel, as well?

SIO: Yes, I was about to go over those again. Do you have any further questions of either of the respondents, Mr. Schiano?

MR. SCHIANO: No, I have made my reservations on the record should the processing warrant further continuance, I believe the ordinary stipulation that it may be continued without motion merely by notice by either side, is obtained.

SIO: All right, with regard to the additional documentation, my notes show that I have asked for the two divorce decrees , one from Mr. Cox, and the one from Mr. Lennon's first wife, the letter fromTax counsel, ..

MR. WILDES: Permit me, I believe that with respect to Mrs. Lennon's divorce decree, you indicated that since the government had accepted it...

SIO: No, I only wanted the one from Cox, in other words...

MR. WILDES: Oh, yes.

MR. SCHIANO: And you want the one from Mr. Lennon in England I believe.

SIO: Mr. Lennon from Mrs. Lennon in England. And I suppose while you are at it, the marriage certificate.

MR. WILDES: Yes.

SIO: All right. I understand that you have some motions that you want to make?

MR. WILDES: Yes, I do.

SIO: All right.

MR. WILDES: I would respectfully renew at this time my original motion to terminate these proceedings on all the grounds previously stated including the allegation that these proceedings were instituted to deny my clients' protected first amendment rights, that their commencement was improvident and in violation of agency standards, practices and policies and the regulations and operations instructions. With respect to this motion I have an additional request and that is that the Special Inquiry Officer defer his determination until the District Director has replied to a series of questions put to him under the Freedom of Information Act of May 1st, 1972. The purpose of that Act is to prevent agencies from making arbitrary decisions in variance of their own policy and therefore to make such common policy a matter of public record. I would feel that the information requested at that time is a necessary part of my motion for termination of proceedings on the ground that this case is not being handled according to the Immigration Service's ordinary practices. My second motion is to terminate these proceedings on the ground that the government has failed to sustain its burden of proof with respect to the deportability of my clients?

SIO: Overruled. Proceed. Next motion.

MR. WILDES: I will assume that there is no objection to my stating that motion

in my brief in which I hope to incorporate the other arguments with respect to adjustment of status.

SIO: All right.

MR. WILDES: I would also move to terminate these proceedings on the ground that KYOKO, the respondent's child and a citizen of the United States is an interested party and has received no notice of these proceedings. In that respect these proceedings violate her constitutional rights with respect to due process and equal protection in that she is being denied her inalienable right to be with her natural mother in violation of several court orders which are a matter of record. We believe that this denies her due process as well and that it denies the respondent theequal protection under the law.

MR. SCHIANO: On that motion, shall I accept this request as an invitation to theproper federal government agency to assist Mrs. Lennon to locate KYOKO?

MR. WILDES: We would certainly appreciate any help and assistance we can get. In view of the fact that my preliminary investigation into the law has disclosed that the ~~brief~~ statutes require, the particular statute in question, requires no proof of criminal intent and also that the cases which we have read under the applicable section of the Immigration and Nationality Act all involve American convictions, that is, convictions of courts here in the United States and we have reason to believe that it may not have been the Congressional intent to include foreign convictions, and in view of the fact that our preliminary investigation into the law has show us that it was not the intent of the Congress to include convictions of every statute involving a drug or marijuana but rather to limit it to those which touch upon traffice in drugs. I would respectfully request a period of time within which to file a brief on the law. I would ask for a period of two months because it involves research not only under our own law, but research under foreign law which I can

only do with the cooperation of other attorneys overseas, whose time is not readily at my disposal. I would also hope to include in that brief my argument with respect to deportability, my analysis of the foreign law and the foundation for our claim that the term marijuana in our law does not include cannabis resin or hashish.

SIO: Do you feel you need two months?

MR. SCHIANO: The government feels that is an inordinate demand, an inordinately long time. If Counsel has not been idle this past two months on the question of the conviction or the law involved in this case, I don't think two months is required. Two weeks might be quite sufficient, and the government will require only one or two days to respond if we limit ourselves to the issues in the case.

SIO: All right, July first. And if the government has any brief...do you want to wait until you get his brief, Mr. Schiano?

MR. SCHIANO: Yes, sir.

SIO: All right, you can have your two weeks thereafter.

MR. SCHIANO: One or two days. I would limit myself.

MR. WILDES: There is a representative of the American Civil Liberties Union who has previously been granted permission to file a brief, who is present. Would it be appropriate that that brief be filed at the same time as mine?

SIO: I have no objection. I have indicated my willingness.

MR. WILDES: Does that cover the request of the Civil Liberties Union?

SIO: July first.

MR. WILDES: The Civil Liberties Union would like to know if they could be given an opportunity to argue on the law?

SIO: No, I want the brief, that's all.

MR. WILDES: I have no further evidence or motions.

SIO: All right, then, the hearing will be closed subject to the stipulated material and of course subject to the payment of the fee on respondents' application.

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CABLE ADDRESS
"LEONWILDES," N.Y.



August 7, 1973

Board of Immigration Appeals
U.S. Department of Justice
521 12th Street, N.W.
Washington, D.C. 20530

Re: LENNON, John Winston Ono
A17 597 321

Gentlemen:

Enclosed herewith is a stipulation signed by the parties in the above-captioned proceedings and containing an agreed list of errata to the official transcript of proceedings, submitted herewith to be attached to the official transcript.

Very truly yours,

LEON WILDES

LW/ts
Encl.

IMMIGRATION AND NATURALIZATION SERVICE



In the Matter of:	
JOHN WINSTON ONO LENNON, Respondent	A17 597 321

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respondent and for the Immigration and Naturalization Service, that the transcript of proceedings be amended as provided by the attached list of errata, consisting of seven pages of corrections.

LEON WILDES
Attorney for Respondent

VINCENT A. SCHIANO
Chief Trial Attorney

Dated: July 24, 1973

PAGE	LINE	SENTENCE
1A	12	I tried to drop Winston but they made me keep Win ston as well.
3A	9	It is a practice of the Immigration Service, although it appears to my knowledge nowhere in the regulations of the law, to accord to the beneficiaries of third preference approved cases, that is those which are likely to be approved, the privilege of deferred departure while they prepare applications for adjustment of status or if there are problems in their way while they are cleared.
3A	15	The District Director has felt obliged not to invoke that beneficial practice in this particular case and we feel that has a deleterious effect upon the cultural interest of the United States, and since the interest of the United States is of the utmost issue in that determination, we have today filed such a motion.
5A	9	The next consideration that I intend to mention is relative there.
5A	14	Because of some recent development over there with respect to the police officers involved and because of the retention of local counsel in England for the purpose of obtaining that expungement, we feel that we need additional time within which to determine whether adjustment of status is the appropriate remedy and we want to be able to apply at a time so as not to break up a family unit.
1	21	Mrs. Lennon has absolutely no legal impediment whatsoever in her application, and the institution of these proceedings in her case was an act which was certainly improvident and possibly a severe abuse of discretion.
2	5	It is our contention, first of all, that Mr. Lennon who has a conviction in England for possession of marijuana, is not statutorily ineligible.
2	10	And the statute is very clear and explicit in stating that it is for the purpose of the manufacture, production, compounding, etcetera

PAGE	LINE	SENTENCE
2	contd.	requiring the ability to traffic in narcotics rather than possession presumably for one's own use.
2	20	In the alternative, if the government believes that Mr. Lennon's marijuana conviction is a bar to his residence, we initiated - we have commenced - a proceeding in the English court to obtain a judicial expungement of that conviction...
3	13	Mrs. Lennon is the mother of a young child, Kyoko, who is a citizen of the United States.
3	20	These parents have spent a great deal of time and agony in trying to secure and finally securing temporary custody orders with respect to the child only to find that the child was spirited away by the natural father.
4	15	First in locating their child, then in obtaining custody and now having the paper which would be meaningless without finding the child.
4	16	Will it be then that the father simply intends to wait out his time until they are removed from the United States in order that he can continue his illegal custody of the child. There is a party to these proceedings, perhaps only represented today by the press, and that is the public.
5	7	The contribution of the Lennons themselves while here in the United States to the international effort in Bangladesh has exceeded in value the contributions of the United States government to the U.N. for that purpose.
6	8	What is occurring is akin to what happened in Mandel v. Mitchell, where the Federal Court observed that it was an abuse of discretion when discretionary relief was denied solely in restraint of first amendment rights.
8	23	MR. WILDES: Is the question whether its approval is necessary?
9	2	MR. WILDES: Well, if they are exempted and of course this is up to the District Director

PAGE	LINE	SENTENCE
9	contd.	again, these petitions could have been approved as the standard adjudicating time in this kind of case, when the Labor Department need not be consulted, would be the normal one month period.
10	17	MR. WILDES: Well before replying to that, if I may ask, is it the Special Inquiry Officer's position that he does not have authority to terminate a proceeding before him?
11	5	MR. WILDES: As you know, the application for adjustment of status is a discretionary application left to the Special Inquiry Officer's discretion.
11	24	It is just impossible to call these people up and say be here Tuesday afternoon at three o'clock, you have to give them notice.
11	26	We have arranged for the Counsel to Apple Records, who is travelling to England tonight, and this is one of his functions.
12	24	MR. WILDES: What we need, Mr. Special Inquiry Officer, is largely a question of opinion, and I think that I should, as counsel to the Lennons, be given sufficient latitude to determine when, and what witnesses I would like to have to present my case.
15	13	MR. WILDES: No, there are a number of errors which have occurred which, if I may, before commenting on the allegations and the legal conclusion in the order to show cause, I should like to comment on, to bring the case up to date because there are any number of occurrences which are not at this point in the record.
15	19	To this point in the proceedings a number of things have taken place which if given an opportunity to report on, then, we will go on.
15	21	There is a discriminatory kind of pre-judgment of every application and request being filed.
15	22	In pursuance of my obligation to represent my

PAGE	LINE	SENTENCE
15	contd.	clients, some time ago, I, on April 28, presented myself at the Immigration Service office and requested, as I had done previously, to see my clients' file.
16	4	Since I know that the District Director has a mandatory obligation to rule on them, I therefore requested of the Federal Court that the District Director be ordered to rule on the applications.
16	6	As a temporary request, I asked that an injunction against deportation proceedings be entered pending the approval or denial action on the third preference petitions.
16	17	I had no alternative but to appear the same afternoon before the Federal Court for the Southern District of New York where I requested a temporary restraining order.
17	17	It is necessary it be pointed out, and I wanted it in the record of these proceedings, that I had to go to a court, and get an injunction, in order to get it done, and it appears to have been done between nine and ten that morning.
18	8	My application to do so before the District Director did result finally in a letter denying my application which merely indicated that the applications were denied in the exercise of discretion because Mr. Lennon has a conviction on his record and for "other circumstances" in the case.
18	11	At no time, despite the fact that I have asked what these "circumstances" are, was I informed of it.
20	8	MR. WILDES: I must admit, I have never even conceived of asking the question in the deportation context.
26	18	We admit allegation number 7 only in that we were served with the latter which is in evidence as Exhibit #5.
26	20	However, only with respect to the factual

PAGE	LINE	SENTENCE
26	contd.	allegations.
26	20	We deny this was an effective revocation.
27	20	MR. WILDES: I have various other documents, one or two of which lack translation, and I can plan to submit all of them.
32	21	MR. WILDES: The Special Inquiry Officer is probably aware that though our Immigration Act was concerned with traffic in narcotic drugs, it never mentioned the word - marijuana - and the transgression in the Act was limited to the possession for certain purposes, which had to do with traffic. In 1956 it was amended to include so-called simple possession.
35	17	I am an Associate Clinical Professor of Psychiatry (Research) at the Massachusetts Mental Health Center. I am also a member of the Boston Psychoanalytic Society.
35	21	I have published roughly about sixty papers, most of which have to do with drugs, and two books, and my particular interest in this particular drug - marijuana- now spans four and a half years during which I have been doing research on it.
36	3	All right. Marihuana Reconsidered by Lester Grinspoon, M.D. will be Exhibit 12.
36	9	Well, the word Cannabis actually comes from the label which Linnaeus affixed to the plant.
36	13	Yes...affixed in 1775 to the plant which is commonly called Indian Hemp.
36	14	He called the plant Cannabis sativa, and pretty much since that time, products of the Cannabis sativa plant have in generic terms been referred to as Cannabis, and that is to say, the non-fiber-as there are also fiber products from the plant, the non-fiber products are subsumed under the generic term referred to as Cannabis.
36	20	Well, Cannabis Resin is the - let me go

PAGE	LINE	SENTENCE
36	contd.	back a little bit - the plant is a DICECOUS plant, that is there are male and female plants.
37	1	There is a male and a female, and this resin is obtained from the female plant at a time when the female begins to flower, extracted from the inflorescence of the flower's pistallate parts.
37	4	Now the resin is obtained in a number of ways, usually in Nepal and India and in other parts of the world as well but whatever way is used for taking it, the product as it finally emerges is referred to, in India as CHARAS and in the rest of the world as Hashish.
37	17	The word marijuana, the eticology of it is not certain, but it is largely thought now to derive from the Portuguese word maniguango which means intoxicant.
37	19	Regardless of its origin, the word is a north American word for what in India is referred to as Bhang and in [illegible]land it is also called Marijuana but frequently the word Pagga, which is a term which comes from South Africa, what it actually is - the pistallate parts of the cannabis sativa plant, usually of the female, but it may also be female and male, and it's a cutting of those staminate and pistallate tops usually mixed with stems and seeds and so forth and so on.
38	1	The term marijuana is used in other parts of the world, but there is no queston that marijuana refers to just this particular form of the plant and not to the resin.
38	4	In other words, what you are saying, in essence, is, that there is a plant known as Cannabis, or Cannabis sativa, which is the Indian Hemp and that there are various things which will come from that plant, that the common usage of marijuana is that the leaves or the stems or the tops or the seeds or a combination of those, whereas Cannabis resin is, you might say, a specialized and

PAGE	LINE	SENTENCE
38	contd.	limited product of the plant, which consists of the resin from the female plant when it begins to flower?
39	20	Growing at a certain altitute in Nepal, this scraped-off yellow oleo resin put it in a box and you would have a very high grade solid Cannabis resin.
40	2	There are other things that have to do with the commercial aspects of the product, they form or make it into little bricks or fingers, or what have you.
40	17	Now, in some forms of Hashish the highest grade of resin is collected.
40	19	But what they do for example is run through the field of Cannabis sativa plants; the one that produces the resin stands about six feet high and they run through the fields either with leather jackets on or nude and they come in from the field and people scrape these little bits and traces off them.
40	23	And that is actually the first step in the production of Hashish, there are other impurities also, I mean it isn't pure Cannabinol derivatives quite obviously, there are other things in it, but it's the purest form.
41	6	That's correct, and in fact, the leaves and the tops, the tops of the plant, the inflorescence is at the top of the plant, there are actually two grades of that.
41	8	There is Bhang which is like our marijuana but there is also Canja which is another leaves and tops preparation, another kind of a product as opposed to the resin product.
41	25	Are you talking about Cannabinol, or Cannabadial, or what?
42	4	Cannabis resin consists of a number of Cannabinols of which some of them I have mentioned delta-1-tetrahydracannabinol, delta-6-tetrahydracannabinol.

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

JON HENDRICKS, being duly sworn, deposes and says:

1. I am the coordinator for the National Committee for John and Yoko, No 1 White Street, in New York, New York, and I make this affidavit in support of JOHN ONO LENNON and YOKO ONO LENNON.

2. The National Committee for John and Yoko consists of members of the AD HOC COMMITTEE FOR ARTISTIC FREEDOM, the JUSTICE FOR JOHN AND YOKO COMMITTEE, concerned citizens, and others.

3. The enclosed letter dated May 11, 1972, and addressed to the Honorable IRA FIELDSTEEL, is signed by my hand.

4. The list of names on the enclosed list, and their accompanying professional affiliations, if any, represents a true list of those names on file with the National Committee for John and Yoko.

5. The attached copies of letters are copies of original letters in my possession, and original photostats of letters in my possession. I certify those attached copies to be accurate.

Jon Hendricks
JON HENDRICKS

(16)

Sworn to before me this

11th day of May, 1972

Toby Jo Platt

TOBY JO PLATT
Notary Public, State of New York
No. (41-8307180)
Qualified in Queens County
Commission Expires March 30, 1973

NATIONAL COMMITTEE FOR JOHN AND YOKO
ONE WHITE STREET, NEW YORK, N.Y. 10013 • (212) 582-5533

KEN DEWEY, Chairman
JON HENDRICKS
PATTY OLDENBURG
HELEN SEAMAN

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Mary Temple
Executive Director, World Federalists
Rip Torn
Actor, Filmmaker
John Updike
Writer
Jon Voight
Actor
Irving Wallace
Writer
Andy Warhol
Artist, Filmmaker
Edmund Wilson
Literary Critic, Writer
Stevie Wonder
Singer
Leonard Woodcock
President, United Auto Workers

Professional affiliations for identification purposes only.

May 11, 1972

Hon. Ira Fieldsteel, Special Inquiry Officer
U.S. Immigration & Naturalization Service
20 West Broadway,
New York, New York 10007

Dear Sir:

We are a group of American citizens who are concerned with the treatment being given to two internationally acclaimed individuals. We respectfully submit the attached letters and list of individuals who have expressed a deep concern for the civil liberties and human rights of John Lennon and Yoko Ono as affected by the present deportation proceedings pending against them. It is our sincere hope that you will take into consideration the concern of these distinguished citizens.

It is these citizens' belief that John Lennon and Yoko Ono would make a unique and irreplaceable cultural contribution to our country, a contribution which would become a valuable part of the American heritage.

We feel that expulsion of John Lennon and Yoko Ono from America would constitute cruel and unusual punishment against them, in light of the circumstances regarding the Texas State Court's decision granting Yoko Ono and John Lennon custody of Mrs. Lennon's eight year old daughter Kyoko, with the requirement that she be "raised and educated" in America.

We are concerned that a deportation order might be viewed by the world as an indication of America's intolerence for interracial marriages, and that Mr. and Mrs. Lennon were being made to suffer because of race considerations. We are confident that this plays no role whatsoever in your deliberations, but we must confess less confidence in the ability of people in other nations to view it otherwise.

NATIONAL COMMITTEE FOR JOHN AND YOKO CONSISTS OF MEMBERS OF THE AD HOC COMMITTEE FOR ARTISTIC FREEDOM, JUSTICE FOR JOHN AND YOKO COMMITTEE AND CONCERNED CITIZENS

NATIONAL COMMITTEE FOR JOHN AND YOKO
ONE WHITE STREET, NEW YORK, N.Y. 10013 • (212) 582-5533

KEN DEWEY, Chairman
JON HENDRICKS
PATTY OLDENBURG
HELEN SEAMAN

We feel that the Immigration Department's procedures which are being invoked for the purpose of this deportation proceeding are being invoked in a discriminatory fashion, and that this selective prosecution is contrary to democratic principles of equal treatment under the law; as such they are insufficient grounds for deportation of these two individuals. It is our profound belief that this proceeding constitutes a violation of constitutionally guaranteed freedoms of speech and expression and, as an abrogation of civil rights, must be viewed as a disguised attempt to silence opposition to the Government's policies and actions. We believe that our worthiest traditions call upon you to terminate these proceedings as an abuse of power or to find these outstanding artists wothy of permanent residence in the United States.

Respectfully,

Jon Hendricks

Jon Hendricks
Co-ordinator
National Committee for John & Yoko

Attachments:
Copies of original letters in my possession which I certify to be accurate.

Sworn to before me this

11th day of May 1972.

TOBY JO PLATT
Notary Public, State of New York
No. (41-8359750)
Qualified in Queens County
Commission Expires March 30, 1973

-179-

Certain members of the squad, who were involved in that arrest, have since come under scrutiny themselves by police higher authority and indeed one Detective Sergeant is now having his past activities enquired into and the nature of the enquiries are such as to lend support to the assertions of Mr. Lennon, made by him subsequent to his being charged.

With his wife restored to good health and having regard to the situation concerning the police witnesses we have had instructions to put forward the necessary application for the purpose of seeking a judicial expungement of the sentence imposed upon Mr. Lennon.

Because of the procedural steps to be taken here, it could be some six to eight weeks before a decision is forthcoming or before the application is otherwise sufficiently advanced.

Yours faithfully,
POLDEN, BISHOP AND GALE

MMN

ZCZC LEON WILDES

515 MADISON AVE

NYC 10022

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FOLLOWS

MARTIN POLDEN

OOL NIL

Reply via RCA: call 212-363-4141

Reply via RCA: call 212-363-4141

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YOUR REF.

OUR REF. MAP/PS/3734

14th March 1972

Leon Wildes, Esq.,
515 Maddison Avenue,
New York 10022,
N.Y.
U.S.A.

Dear Sir,

Mr. John Lennon

I confirm that I acted for Mr. Lennon when he was charged in October 1968 with possessing a quantity of cannabis amounting to 14.20 grammes.

The alleged offence took place at a time when his wife was expecting a baby and was experiencing physical and emotional difficulties. The impact of the proceedings needless to say added to her burdens.

What Mr. Lennon did not want to do, at the time, was to aggravate her condition and he sought my advice as to what course he should adopt in this regard.

The facts of the case were such that I considered Mr. Lennon to have a good defence but for the presentation of the same it would be essential to call Mrs. Lennon as a witness. I was obliged to explain to him that the only course open that would obviate the need for her appearance as a witness would be for him to plead guilty.

An essential element of the defence concerned the manner in which the police conducted their investigations at the time of the arrest, and in this regard it would have been necessary to make certain allegations concerning the actions of individual policemen but a difficulty existed over lack of corroborative evidence.

Cont.d/...2

THE NATIONAL COMMITTEE FOR JOHN AND YOKO

representing members of the Ad Hoc Committee for Artistic Freedom, the Justice for John and Yoko Committee, and concerned citizens. Professional affiliations are for identification purposes only. Partial listing--

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Congresswoman

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Eleanor Mikus
New York City

Henry Miller
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Mitch Miller
Bandleader

Kate Millett
Writer, Artist

Norma Milson
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Tom Monaster
The New York Daily News

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Juris Doctor Magazine

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New York Magazine

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Actor

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Rex Reed
Film Critic

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Assistant General Secretary, Division of Christian Life and Mission, National Council of Churches of Christ in the U.S.A.

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Village Voice

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Ned Rorem
Composer, Writer

Barbara Rose
Art Critic

James Rosenquist
Artist

William Rubin
Museum of Modern Art, N.Y.C.

Todd Rundgren
Singer, Songwriter

Don Rundquist
Columbia Broadcasting System

Lucas Samaras
Artist

Ed Sanders
Poet, Writer

Irving Sandler
Art Historian, Critic, President, American Section, International Association of Art Critics

May Sarton
Poet

Charles B. Saunders
Board of Directors, The Youth Project
Board of Directors, Robert F. Kennedy Memorial

John P. Scanlon
Assistant Administrator, Economic Development Administration, N.Y.C.

Dore Schary
Writer, Former Commissioner of Cultural Affairs, N.Y.C.

Dr. George Schwartz
Medical Research

Dave Scott
Peace Education Division, American Friends Service Committee

Robert C. Scull
New York City

Dorothy Seiberling
Art Editor, Life Magazine

Harold Seletsky
Composer

Carl M. Selinger
Dean, Bard College, N.Y.

Peter Selz
Director, University of Calif. at Berkeley Art Museum

Karl Shapiro
Poet

Meyer Shapiro
Professor of Art History, Columbia Univ.

Willoughby Sharp
Editor Avalanche Magazine

Elizabeth Shaw
Director of Public Information, Museum of Modern Art, N.Y.C.

Carly Simon
Singer, Songwriter

Nina Simone
Singer

Penny Singleton
Actress, President, American Guild of Variety Artists

Howard Smith
Writer, The Village Voice

W.D. Snodgrass
Poet

Mr. & Mrs. Horace Solomon
New York City

Illeana Sonnabend
Director, Sonnabend Galleries, N.Y. & Paris

Michael Sonnabend
Sonnabend Gallery, N.Y.C.

Terry Southern
Writer

Raphael Soyer
Artist

Sigrid Spaeth
New York City

Phil Spector
Record Producer

Nancy Spiro
New York City

Joseph Stein
Writer

Rudi Stern
Co-Director, Global Village Video Resource Center, N.Y.C.

Olga Stevens
The Puppeteers of America

Alan Strolt
New Line Cinema, N.Y.C.

Jean Strouse
Editor, Pantheon Books

Billy & Amy Sullivan
New York City

Simone Withers Swan
Withers Swan Public Relations, N.Y.C.

May Natalie Tabak
New York City

William Targ
Editor in Chief, G. P. Putnam's Sons

John P. Taylor
Director, Film and Visual Arts, World Council of Churches, Geneva, Switzerland

James Taylor
Singer, Songwriter

Kate Taylor
Singer, Songwriter

Mary Temple
Executive Director, World Federalists

Lockwood Thompson
Cleveland, Ohio

Virgil Thompson
Composer, Music Critic

Jean Toche
Artist

Rip Torn
Actor, Filmmaker

Diane Tucker
Executive Secretary, Pasadena Museum

Marcia Tucker
Curator, Whitney Museum of American Art, N.Y.C.

Maurice Tuchman
Senior Curator, Los Angeles County Museum

Phyllis Tuchman
Art Writer

Davis Tudor
Composer, Musician

Richard Turley
New York City

Jack Tworkov
Artist

John Updike
Writer

Lindsy Van Gelder
New York Post

Amos Vogel
Writer

Jon Voight
Actor

Kurt Vonnegut, Jr,
Writer

Anne Waldman
Poet, Director, St-Mark's-In-the-Bowerie-Poetry Project

Dianne Waldman
Curator, Guggenheim Museum

Irving Wallace
Writer

Michele Wallace
N.Y.C.

Eli Wallach
Actor

William Warfield
Singer

Andy Warhol
Artist, Filmmaker

Emily Wasserman
Art Historian, Critic Art Forum

Robert M. Watts
Professor of Art, Rutgers University

John Weber
Director, John Weber Gallery, N.Y.C.

Anne Wehrer
President, Dramatic Arts Center

Joseph Wehrer
Architect

Morris R. Werner
New York City

Helen Whitney
N.B.C. News

Stephen E. Weil
Administrator, Whitney Museum of
American Art, N.Y.C.

Gina Wilcox
New York City

Emmett Williams
Poet, California Institute of the Arts

Edmund Wilson
Literary Critic, Writer

John Wilson
Artist, Associate Professor of Art,
Boston University

Howard Wise
Director, Howard Wise Gallery, N.Y.C.

Joyce Wittenborn
Wittenborn & Co., N.Y.C.

Stevie Wonder
Singer, Songwriter

Leonard Woodcock
President, United Auto Workers

James Wright
Poet

Donald Wycoff
American Crafts Council

Eve Wyler
New York City

Charlotte Zwerin
Filmmaker

Tom Zito
Washington Post

New York Shakespeare Festival

425 LAFAYETTE STREET · NEW YORK, N.Y. 10003 · Telephone 677-1750

JOSEPH PAPP · PRODUCER

April 13, 1972

Immigration and Naturalization Service
Department of Justice
20 West Broadway
New York, New York

Gentlemen:

Whatever legal objections are being offered to justify the deportation of John Lennon and Yoko Ono, I must declare that the cultural community of the United States would suffer a serious loss in the absence of these two distinguished international artists.

I am somewhat familiar with the specifics of the case, principally the 1968 arrest of John Lennon in London for possession of marijuana. It was upon the advice of Mr. Lennon's attorney, I believe, that he pleaded guilty to the charge and was fined. I will avoid broaching the complicated legalistics and moral issue surrounding the possession and use of marijuana -- I merely reiterate my strong belief in the talent, character and worth of the important artists in question and sincerely trust that the Immigration and Naturalization Service of the Department of Justice will be humane and flexible in its execution of the law. Please accept their application for permanent residence in the United States. It is unquestionably in our national interest.

Sincerely,

Joseph Papp

JP/gm

CHARTERED BY THE NEW YORK STATE EDUCATION DEPARTMENT · PRODUCED IN COOPERATION WITH THE CITY OF NEW YORK

Mr. Hardrick.
F/I.

Diocese of New York
1047 Amsterdam Avenue, at 112th St.
New York, N.Y. 10025
(212) 749-6363

April 12, 1972

Immigration and Naturalization Service
Department of Justice
20 West Broadway
New York, New York 10013

Dear Sirs:

I was deeply shocked to learn of the plans to deport Mr. John Lennon and Yoko Ono from this country. I'm disturbed about the proposed action on several levels. First, it seems to me that the charges are very weak -- namely, the alleged possession of Marijuana in London. Secondly, as a parent, I feel deeply that consideration should be given to the fact that Yoko Ono's child might have to be taken from her mother should the deportation take effect. Thirdly, this would be one more action on the part of the government to disillusion the younger generation to whom these two persons have become an important influence. They could not help but feel that, if they were private citizens without any political views, such a flimsy allegation as possession of Marijuana in another country at another time would in no way interfere with their residence here.

Therefore, it looks quite clear to the public that the reason for the proposed deportation would be their activity against the war and perhaps other political views. This is the worst way to build credibility for a free democratic society on the part of our younger people. It makes it very difficult for those of us who are attempting to revive their respect for our government and other institutions. I trust that the Immigration and Naturalization Service will reconsider their action. Believe me, I'm deeply concerned about this.

Sincerely,

Bishop Coadjutor

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

April 27, 1972

Hon. Raymond F. Farrell
Commissioner
Immigration and Naturalization Service
United States Department of Justice
119 D Street
N.E., Washington, D.C. 20536

Dear Commissioner Farrell:

I am writing this letter to you on behalf of John Lennon and Yoko Ono who are currently facing deportation proceedings inititated by your Department.

I consider it to be very much in the public interest, from the point of view of the citizens of New York as well as the citizens of the Country, that artists of their distinction be granted residence status.

They have personally told me of their love for New York City and that they wish to make it their home. They have made me familiar with the tragic hardship involved in their desperate effort to find Yoko's 8 year old child, Kyoko. I believe this is the type of hardship that our Immigration laws must recognize and the removal of the Lennons from this Country would be contrary both to the principles of our Country as well as the humanitarian practices which should be implemented by the Department of Immigration.

The only question which is raised against these people is that they do speak out with strong and critical voices on major issues of the day. If this is the motive underlying the unusual and harsh action taken by the Immigration and Naturalization Service, then it is an attempt to silence Constitutionally protected 1st Amendment rights of free speech and association and a denial of the civil liberties of these two people.

(13)

In light of their unique past and present contribution in the fields of music and the arts, and considering their talent to be so outstanding as to be ranked among the greatest of our time in these fields, a grave injustice is being perpetuated by the continuance of the deportation proceeding.

Very truly yours,

John V. Lindsay
MAYOR

cc: Attorney General Richard G. Kleindienst
Commissioner Sol Marks
Senator Jacob Javits
Senator James Buckley

In the matter of MR. JOHN WINSTON ONO LENNON and MRS. YOKO ONO LENNON.

I, William David Ormsby Gore, Fifth Baron Harlech, hereby make oath and say as follows:

1. I am a Privy Councillor, Member of the House of Lords and Chairman of HTV Limited, former Member of Parliament, Minister of State for Foreign Affairs, British Ambassador to the United States of America.

2. I much regret I am unable to appear in person at these proceedings but I have the following statement to make in support of John Lennon's application for permanent resident status in the United States of America.

3. When the musical history of our times comes to be written there is no doubt that the name of John Lennon will be given a most important place in it. This will not only be because, as a musical performer he has given pleasure to countless millions, but because he has pioneered new frontiers in music and because his compositions will have become part of the standard repertoire of every collection of musicians from the humblest pop group to the Boston Symphony Orchestra. Indeed they are already. On any criteria, he must be regarded as an international artist of the first rank in the field of music. In addition, he has made notable contributions in the field of writing and painting.

(15)

4. I understand that his application to be allowed to reside in the United States of America is under consideration and that the only apparent grounds for opposing his application are based on his conviction in the United Kingdom on a charge of possessing cannabis. Leaving aside the question of whether he was in fact guilty, which seems now to be in doubt, I know personally of a number of cases in which such a conviction has not prevented the granting by the American authorities of a visa to enter the United States. This has, of course, up to now been so in the case of John Lennon. It may be that there is a theory that no danger arises for the United States of america if someone resides there for six months but that the danger does arise if he stays for seven months or longer. This argument is so obviously ludicrous that I make no further comment on it.

5. I have also seen it suggested that objection might be made to his continued residence on grounds connected with his general character. As to this I can testify that he has consistently made public his strongly held views in favour of non-violence and peace and he has demonstrated in his works and in his life his compassion and his concern for his fellow men.

6. As a life-long friend of the United States of America I reject the suggestion that the most powerful democratic country in the world whose whole constitution is based on individual freedom and human rights could believe for one moment that it might be subverted by the presence of a single young artist holding the views I have described.

Sworn by the said William David Ormsby Gore, Baron Harlech at 99 Baker Street, London W1

Dated this 11th day of May 1972

Harlech

before me

at 99 Baker Street
London W1.
this 11th day of May 1972
L. H. Brooks

A commissioner of oaths

(copy of telegram sent)

Immigration & Naturalization
Department of Justice
New York City, N. Y. 10020

It would be an outrage and a tragedy for this country if John Lennon and Yoko Ono are deported.

Their strong anti-drug stand and their clear eloquent commitment to non-violence, and to participation in action for consctructive social change are messages badly needed in America today...particulary for our youth.

In addition this deportation action, depriving them of their legal right to bring up their daughter would be cruel and inhuman, bringing personal tragedy to their family, forcing Mrs. Lennon to choose between her husband and her child.

I join thousands of other concerned Americans in asking you to take favorable action enabling John Lennon and Yoko Ono to remain in this country.

signed

Leonard Woodcock
President
United Auto Workers Union

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

FILE: A17 597 321

DATE: August 11, 1971

IN RE: John Winston Lennon

APPLICATION: Temporary admission to the United States pursuant to section 212(d) (3) (A), Immigration and Nationality Act

The applicant(s) has (have) been found by a [X] consular officer [ ] immigration officer to be ineligible to receive a nonimmigrant visa under Section(s) 212(a) 23 of the Act.

Nationality:	Date and Country of Birth:	Country of Residence:
Great Britain	9-10-40 - England	England

Occupation:	Employer:
Musician	Self-employed

Purpose in seeking entry into United States and destination:
To edit film and consult with business associates at ABKCO Industries, 17 Broadway, New York City and Capital Records in New York City in connection with record release in September 1971 and to attend custody hearing in St. Thomas, Virgin Islands on September 16, 1971.

Plans regarding travel to United States and period of temporary stay:
One entry during August or September for six weeks.

Basis for favorable action:
To promote American Business Interests and for Humanitarian reasons.

ORDER: It is ordered that the application be granted for the above indicated purpose, subject to revocation at any time, valid as set forth below.

ENTRY: One during August or September 1971

PERIOD OF TEMPORARY STAY: Six weeks on condition that the activities and itinerary of the applicant shall be limited to those set forth above and that no extension of stay or change in activities or deviation of itinerary shall be authorized without prior approval of the District Director, Washington, D. C.

Assistant Commissioner, Adjudications

Section 212(a) (28) cases only.
Basis of excludability

TC:WM:hcm Telephoned to Mrs. Gilchrist, Visa Office 2:30 PM, 8/11/71

Form I-194
(Rev. 3-15-71) Y

14 (N)

File Copy

UNITED STATES OF AMERICA

IMMIGRANT VISA AND ALIEN REGISTRATION

I-1425879

OF: COX (Family name) Yoko (First name) nee: ONO (Middle name)

PORT OF SFR-139

I certify that the immigrant named herein arrived in the United States at this port on

PAA FIT 846
(Name of vessel or flight No. of aircraft)

and was inspected by U.S. IMMIGRATION SERVICE
SAN FRANCISCO, CALIF. 359
ADMITTED
SEP 13 1964
CLASS M-1
TO

detained for further inquiry by special officer under Symbol M-1 Section 101(a)(27)(A) of the Immigration and Nationality Act.

Alan V. McCown
Immigrant Inspector.

AMERICAN Embassy
AT Tokyo, Japan

John C. Kelly
Vice Consul of the United States of America.

PASSED U.S.P.H.S. SAN FRANCISCO

Indexed
1-151 Female
Date 9-23-64

UNITED STATES OF AMERICA

STATISTICS

Service No.
Tariff Item No.
Fee Paid $20
Local Cy equiv.

NBC VP HAR

ACTION OF SPECIAL INQUIRY OFFICER

The immigrant herein was (admitted) (excluded) and {no appeal taken / appeal taken} under

Symbol

Section ____ of the Immigration and Nationality Act.

Special Inquiry Officer.

ACTION ON APPEAL

ADMITTED

EXCLUDED

DATE

This visa is issued under Section 221 of the Immigration and Nationality Act, and upon the basis of the facts stated in the application.

IMMIGRANT CLASSIFICATION

NONQUOTA (Symbol) M-1 QUOTA (Symbol)

VISA PETITION NO. IF ANY VP was appr. by INS., Tokyo, Japan on 7/1/63 under Sec. 101a(27)(A) of the Act.

IMMIGRANT VISA NO. 443 QUOTA Nonquota

ISSUED ON (Day) 10 (Month) September (Year) 1964

THE VALIDITY OF THIS VISA EXPIRES MIDNIGHT AT THE END OF (Day) 9 (Month) January (Year) 1965

NATIONALITY (If stateless, so state, and give previous nationality) Japanese

Japanese PASSPORT

NO. 644712

OR OTHER TRAVEL DOCUMENTS (Describe) 2

ISSUED TO Mrs. Yoko COX (maiden name: Yoko ONO)

BY Japanese Ministry of Foreign Affairs

ON August 31, 1964

EXPIRES Upon bearer's return to Japan

FORM FS-511 (18)

C700 0500

Form I-484J
(Rev. 2-1-71)N

CADJ-7

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
New York, New York

NOTICE OF [x] THIRD [ ] SIXTH PREFERENCE PETITION APPROVED UNDER SECTION 203(a) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED.

IMPORTANT: IF THIS PETITION HAS BEEN APPROVED FOR SIXTH PREFERENCE AND IF CONDITIONS CHANGE SO THAT YOU DO NOT INTEND TO EMPLOY THE BENEFICIARY, NOTIFY THIS OFFICE IMMEDIATELY.

Name of Beneficiary		File No.	Date of Notice
John Winston LENNON		A17 597 321	May 2, 1972
Country of birth	Occupation	Date Petition Filed	
England	Composer(Musician)	March 6, 1972	

VALIDITY: The approval of a petition for third or sixth preference classification is valid for as long as the supporting labor certification is valid and unexpired, provided in the case of a petition for third preference classification there is no change in the beneficiary's intention to engage in the indicated profession, art or science, and provided in the case of a petition for sixth preference classification there is no change in the respective intentions of the petitioner and the beneficiary that the beneficiary will be employed by the petitioner in the capacity indicated in the petition.

Please note the items below which are indicated by "x" marks concerning this petition.

[ ] Your petition for preference classification has been approved by the Service and forwarded to the United States Consulate at _____. This completes all action by this Service on the petition. This Service has nothing to do with the actual issuance of visas. Visas are issued only by a United States Consul who is under the jurisdiction of the U.S. Department of State. Under the law only a limited number of visas may be issued by that Department during each year and they must be issued strictly in the chronological order in which petitions were filed for the same classification. When the beneficiary's turn is reached on the visa waiting list, the United States Consul will inform him and consider issuance of the visa. *Inquiry concerning visa issuance should be addressed to the Consul. This Service will be unable to answer any inquiry concerning visa issuance.*

[ ] The petition has been approved. The petition states that the beneficiary is in the United States and will apply to become a lawful permanent resident. The enclosed application for this purpose (Form I-485) should be completed and submitted by the beneficiary in accordance with the instructions contained therein. (If the beneficiary had previously submitted Form I-485 which was returned to him, he should resubmit that form.)

[ ] The petition has been approved. The beneficiary will be informed of the decision made on his pending application to become a lawful permanent resident (Form I-485).

[ ] The petition has been approved. The petition states that the beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident. A visa number is not presently available; therefore, the beneficiary may not apply for adjustment of status to that of a permanent resident. The beneficiary has been or will be notified concerning his stay in the United States.

[x] Remarks: The visa petition has been approved.

cc: Leon Wildes, Esq.
515 Madison Avenue, NYC

NAME AND ADDRESS OF PETITIONER

John Winston Lennon
105 Bank Street
New York, New York

Very truly yours,

DISTRICT DIRECTOR

-203-

THIS NOTICE TO BE MAILED TO THE ATTORNEY OR REPRESENTATIVE, IF ANY.

Form I-797
(Rev. 2-1-71)N

CADJ-7

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
New York, New York

NOTICE OF [xx] THIRD [ ] SIXTH PREFERENCE PETITION APPROVED UNDER SECTION 203(a) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED.

IMPORTANT: IF THIS PETITION HAS BEEN APPROVED FOR SIXTH PREFERENCE AND IF CONDITIONS CHANGE SO THAT YOU DO NOT INTEND TO EMPLOY THE BENEFICIARY, NOTIFY THIS OFFICE IMMEDIATELY.

Name of Beneficiary		File No.	Date of Notice
Yoko Ono LENNON		A19 489 154	May 2, 1972
Country of birth	Occupation	Date Petition Filed	
Japan	Composer(Musician)	March 6, 1972	

VALIDITY: The approval of a petition for third or sixth preference classification is valid for as long as the supporting labor certification is valid and unexpired, provided in the case of a petition for third preference classification there is no change in the beneficiary's intention to engage in the indicated profession, art or science, and provided in the case of a petition for sixth preference classification there is no change in the respective intentions of the petitioner and the beneficiary that the beneficiary will be employed by the petitioner in the capacity indicated in the petition.

Please note the items below which are indicated by "x" marks concerning this petition.

[ ] Your petition for preference classification has been approved by the Service and forwarded to the United States Consulate at _____. This completes all action by this Service on the petition. This Service has nothing to do with the actual issuance of visas. Visas are issued only by a United States Consul who is under the jurisdiction of the U.S. Department of State. Under the law only a limited number of visas may be issued by that Department during each year and they must be issued strictly in the chronological order in which petitions were filed for the same classification. When the beneficiary's turn is reached on the visa waiting list, the United States Consul will inform him and consider issuance of the visa. *Inquiry concerning visa issuance should be addressed to the Consul. This Service will be unable to answer any inquiry concerning visa issuance.*

[xx] The petition has been approved. The petition states that the beneficiary is in the United States and will apply to become a lawful permanent resident. The enclosed application for this purpose (Form I-485) should be completed and submitted by the beneficiary in accordance with the instructions contained therein. (If the beneficiary had previously submitted Form I-485 which was returned to him, he should resubmit that form.)

[ ] The petition has been approved. The beneficiary will be informed of the decision made on his pending application to become a lawful permanent resident (Form I-485).

[ ] The petition has been approved. The petition states that the beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident. A visa number is not presently available; therefore, the beneficiary may not apply for adjustment of status to that of a permanent resident. The beneficiary has been or will be notified concerning his stay in the United States.

[ ] Remarks:

cc: Leon Wildes, Esquire
515 Madison Avenue
New York, New York 10022

NAME AND ADDRESS OF PETITIONER

Yoko Ono Lennon
105 Bank Street
New York, New York

Very truly yours,

[signature]

DISTRICT DIRECTOR

THIS NOTICE TO BE MAILED TO THE ATTORNEY OR REPRESENTATIVE, IF ANY.

marihuana reconsidered

Lester Grinspoon, M.D.

Associate Clinical Professor of Psychiatry,
Harvard Medical School

A psychiatrist's analysis of marihuana in America—its psychological, physiological, and social effects—and the implications of its continuing presence

HARVARD UNIVERSITY PRESS

A Harvard Paperback $2.45

CURRICULUM VITAE

Name: Lester Grinspoon, M.D.

Date of Birth: June 24, 1928, Newton, Massachusetts

Marital Status: Married, four children

EDUCATION:

1951 B.S., Tufts College, Medford, Massachusetts, magna cum laude

1955 M.D., Harvard Medical School, Boston, Massachusetts, cum laude

POSTGRADUATE TRAINING AND EXPERIENCE:

1955-1956 Intern in Medicine, Beth Israel Hospital, Boston, Mass.

1956-1958 Field Investigator for the National Cancer Institute, Los Angeles, California

1958-1961 Resident in Psychiatry, Massachusetts Mental Health Center, (Chief of Drug Unit 1959-1960; Chief of Service 1960-1961)

RESEARCH AND TEACHING APPOINTMENTS:

1949-1951 Olmstead Fellow in Biology, Tufts College, Medford, Mass.

1956-1958 Assistant in Medicine, University of Southern California School of Medicine, Los Angeles, California

1958-1959 Teaching Fellow in Psychiatry, Harvard Medical School, Boston, Mass.

1959-1961 Research Fellow in Psychiatry, Harvard Medical School, Boston, Mass.

1961-1962 Assistant in Psychiatry, Harvard Medical School, Boston, Mass.

1961-1963 Lecturer on Social Relations, Harvard University, Cambridge, Mass.

1962-1964 Instructor in Psychiatry, Harvard Medical School, Boston, Mass.

1961-1964 Senior Research Psychiatrist, Massachusetts Mental Health Center, Boston, Mass.

1964- Director of Psychiatry (Research), Massachusetts Mental Health Center, Boston, Mass.

1964-1965 Clinical Associate in Psychiatry, Harvard Medical School, Boston, Mass.

1965-1968 Assistant Clinical Professor of Psychiatry, Harvard Medical School, Boston, Mass.

1968- Associate Clinical Professor of Psychiatry, Harvard Medical School, Boston, Mass.

(12)

OTHER APPOINTMENTS:

Director, Summer Institute on Alternative Ways of Handling Conflict: Behavioral Science Research Toward Peace, sponsored by the American Academy of Arts and Science, Summer of 1962

1963- Consultant in Psychiatry and Research, State Hospital, Boston, Mass.

1969- Examiner, American Board of Psychiatry and Neurology.

HONORARY SOCIETIES:

Phi Beta Kappa
Alpha Omega Alpha
Boylston Society, Harvard Medical School

PROFESSIONAL ORGANIZATIONS:

Massachusetts Medical Society
American Psychiatric Association (Fellow)
American Association for the Advancement of Science
Group for the Advancement of Psychiatry, Committee on Social Issues

MEDICAL LICENSING AND CERTIFICATION:

Diplomate, National Board of Medical Examiners
Licensed, States of Massachusetts and California
Diplomate, American Board of Psychiatry

PSYCHOANALYTIC TRAINING:

Graduate, Boston Psychoanalytic Institute, Boston, Massachusetts
Member, Boston Psychoanalytic Society, Boston, Massachusetts

PUBLICATIONS:

1. Grinspoon, L., Sagild, U., Blum, H.P., and Marble, A.: Changes in circulating eosinophila in juvenile diabetics in response to epinephrine, ACTH, and hypoglycemia. Journal of Clinical Endocrinology and Metabolism, 13:753-768, 1953.

2. Alexander, B., Meyers, L., Kenny, J., Goldstein, R., Gurewitch, V., and Grinspoon, L.: Blood coagulation in pregnancy: Proconvertin and prothrombin, and the hypercoagulable state. New England Journal of Medicine, 254:358-363, 1956.

3. Grinspoon, L., and Dunn, J.E.: A study of the frequency of achlorhydria among Japanese in Los Angeles. Journal of the National Cancer Institute, 22:617-631, 1959.

4. Ewalt, J.R., Alexander, G.L., and Grinspoon, L.: Changing practices: a plea and some predictions. Mental Hospitals, 11:9-13, 1960.

5. Grinspoon, L., and Courtney, P. H., and Bergen, H. M.: The Usefulness of a structured parents' group in rehabilitation. Mental Patients in Transition, Greenblatt, M., Levinson, D. J., and Klerman, G. L. (eds.), Springfield, Illinois: Charles C. Thomas, Publisher, 1961, pp. 229-260.

6. Grinspoon, L., and Lieberman, E. J.: Escape from the Bomb: anxiety, anger, and "the enemy." The New Republic, 145:10-15. September 4, 1961.

7. Grinspoon, L., and Lieberman, E. J.: Our psychological retreat from the bomb. Science Digest, 50:1-6, December, 1961.

8. Grinspoon, L., and Cohen, R. E.: The introduction of a part-time hospitalization program into an acute treatment service. New England Journal of Medicine, 267: 756-762, October, 1962.

9. Grinspoon, L.: The psychological problems of life in a fallout shelter. No Place to Hide, Melman, S. (ed.), New York: Grove Press, Inc., 1962.

10. Cohen, R. E., and Grinspoon, L.: Limit setting as a corrective ego experience. The Archives of General Psychiatry, 8:74-79, January, 1963.

11. Grinspoon, L., Heath, L. M., Barron, M. W., Jones, M. R., and Furtado, L. P.: Day care program on an inpatient service. Mental Hospitals, 14:259-264, May, 1963.

12. Grinspoon, L.: Fallout shelters and mental health. Resident Physician, 9:76-81, May, 1963. Also in Medical Times, 91:6:517-520, June, 1963.

13. Grinspoon, L. and Greenblatt, M.: Pharmacotherapy combined with other treatment methods. Presented at the Third World Congress of Psychiatry, Montreal, June 4-10, 1961. Published in Comprehensive Psychiatry, 4:4:256-262, August, 1963.

14. Grinspoon, L., and Cohen, R. E.: A new approach to the hospitalization of the mentally ill. Clinical Medicine, 70:11:1983-1995, November, 1963.

15. Post, J. M., Swanson, J. F., and Grinspoon, L.: Cyclic Staff Responses to Chronic Schizophrenic Patients. Perspectives in Psychiatric Care, 2:3:13-19, 1964.

16. Shader, R. I., Cohler, J., Elashoff, R., and Grinspoon, L.: Phenobarbital and atropine in combination, an active control substance for phenothiazine research. Journal of Psychiatric Research, 2: 169-183, 1964.

17. Grinspoon, L.: Interpersonal constraints and the decision-maker. International Conflict and Behavioral Science: the Craigville Papers: Fisher, Roger (ed.) New York, Basic Books, Inc., 1964, pp. 272-281.

18. Grinspoon, L.: The truth is not enough. International Conflict and Behavioral Science: the Craigville Papers: Fisher, Roger (ed.) New York, Basic Books, Inc., 1964, pp. 272-281.

19. Grinspoon, L.: Decision-maker's dilemma. Harvard Medical Alumni Bulletin, 38:5: 36-41, Summer, 1964.

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ABSTRACTS:

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IN THE INNER LONDON AREA AND IN THE METROPOLITAN POLICE DISTRICT

MEMORANDUM of a CONVICTION ~~ORDER TYPEWRITING~~ entered in the REGISTER of the

MARYLEBONE MAGISTRATES' COURT.

The 28th day of NOVEMBER 1968

Name of informant or of complainant	Name of defendant Age if known	Nature of offence or matter of complaint	Date of offence or matter of complaint	Plea or consent to order	Minute of Adjudication	Time allowed for payment and instalments
D.S. PILCHER C.O.C.I.	John Winston LENNON Age 28 Musician	(1) Having in his possesion a dangerous drug to wit Cannabis Resin without being duly authorised, at 34 Montague Square W.1. on 18-10-68. Con to Regs. 3 Dangerous Drugs(No.2) Regs.; Dangerous Drugs Act 1965.	18/10/68	Est. Guilty	1 £150, 20gns costs.	7 days
		(2) Wilfully obstructing Norman Filcher a constable of the metropolitan police force then exercising his powers under the Dangerous Drugs Act. 1965 at 34, Montague Square, W.1. Con. to Sec. 14(3) Dangerous Drugs Act 1965.		Est. NA Guilty	2 No evidence offered dismissed (Signed) John PHIPPS Magistrate Adjudicating	

M.C.A. 118—1.69

Extract from Register Proving Proceeding

I certify the above extract to be a true copy.

Clerk of the said Magistrates' Court.

The 13th day of JANUARY 1969

2/13-

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON and YOKO ONO LENNON,

Plaintiffs,

-against-

SOL MARKS, Individually, and as Director of the Immigration and Naturalization Service of the New York District,

Defendant.

CIVIL ACTION NO.

72 C 1784

ORDER TO SHOW CAUSE

Upon the annexed affidavits of plaintiffs, JOHN WINSTON ONO LENNON and YOKO ONO LENNON, the supporting ~~affirmation~~ affidavit of LEON WILDES, the summons and verified complaint, it is

ORDERED, that the defendant show cause at a motion term of this Court, United States Courthouse, Foley Square, New York, Room 506, on the 2d day of MAY, 1972, at Under Rule 65 10:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why an order should not be made herein enjoining defendant, his agents, and the Immigration and Naturalization Service, from holding a hearing pursuant to 8 U.S.C. 1251, 1252 or any other deportation hearing until such time as the defendant has reviewed and ruled upon plaintiffs' petitions for third preference visas pursuant to 8 U.S.C. §§1153, 1154, and compelling the defendant and those acting under him to rule upon the third preference applications of the plaintiffs, and for such other and further relief as the Court may deem proper under the circumstances.

PENDING THE HEARING AND DETERMINATION of this motion, it is

FURTHER ORDERED that defendant, his agents, and the Immigration and Naturalization Service, are hereby enjoined from holding a hearing pursuant to 8 U.S.C. 1251, 152, or any other deporation hearing.

SUFFICIENT CAUSE THEREFORE APPEARING, LET service of a copy of this Order and the papers upon which it was granted upon the United States Attorney for the Southern District of New York, on or before 5 p.m. on May 1, 1972 be sufficient.

/s/ Morris E. Lasker

United States District Judge

DATED: NEW YORK, NEW YORK
MAY 1, 1972

Issued at 4:35 PM

NOTICE OF ENTRY

Sir :- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,
LEON WILDES

Attorney for

Office and Post Office Address
515 Madison Avenue
Borough of Manhattan New York, N. Y. 10022

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir :- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
M.

Dated,

Yours, etc.,
LEON WILDES

Attorney for

Office and Post Office Address
515 Madison Avenue
Borough of Manhattan New York, N. Y. 10022

To

Attorney(s) for

Index No. Year 19

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON and YOKO ONO LENNON,

Plaintiffs,
-against-

SOL MARKS, Individually, and as Director of the Immigration and Naturalization Service of the New York District,

Defendant.

ORDER TO SHOW CAUSE WITH SUPPORTING AFFIDAVITS SUMMONS AND COMPLAINT

LEON WILDES

Attorney for

Office and Post Office Address, Telephone
515 Madison Avenue
Borough of Manhattan New York, N. Y. 10022
PL. 3-3468

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

1000 Ormond, Julius Blumberg, Inc., 80 Beekman Place, N. Y. C.

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLaza 3-3468

CABLE ADDRESS
"LEONWILDES," N. Y.

June 27, 1972

Hon. Ira Fieldsteel
Special Inquiry Officer
U.S. Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Re: LENNON, John Winston Ono
A17 597 321
LENNON, Yoko Ono
A19 489 154

MOTION TO TAKE TESTIMONY OF GOVERNMENT WITNESS

Dear Sir:

It is respectfully moved, pursuant to 8 C.F.R. 287.4 (a)(2) that the Special Inquiry Officer issue subpoenas requiring the attendance of government witnesses and the production of books, papers and other documentary evidence, in support of the respondents' motion to terminate these deportation proceedings.

A motion to terminate these proceedings was made to the District Director on March 15, 1972 under 8 C.F.R. 242.7 and thereafter the motion was renewed before the Special Inquiry Officer in these proceedings. The motion was further renewed at the termination of the government's case and following the filing of applications for adjustment of status under section 245 of the Immigration and Nationality Act, as amended.

One of the bases for the motion was the fact that the Service had violated its own established practice and policy in commencing and maintaining deportation proceedings against these aliens. It is claimed that the Service has an invariable policy which was not followed in the instant case, and that the failure to follow this established

policy denies these aliens their due process rights under the U.S. Constitution and causes them irreparable harm. The Special Inquiry Officer granted the respondents' counsel until July 1, 1972 to file a brief in support of this proposition.

In order to secure the material necessary to brief the issue, respondents' counsel filed with the District Director on May 1, 1972 a request for the necessary information, specifying in detail the information required. A copy of this request is attached as Exhibit 1.

On May 23, 1972 the respondents' counsel telephoned the government's Trial Attorney, further requesting the said information. The government's Trial Attorney refused to comply with the request and further stated that the information would not be furnished. A further request dated June 5, 1972 was presented to the District Director, a copy of which is attached as Exhibit 2. The reply of the District Director dated June 14, 1972 is attached as Exhibit 3, inviting that all further questions with respect to "Service policy or instructions ... must be addressed to the Central Office".

It is apparent that the information contained in the reading room of the New York District Office of the Immigration and Naturalization Service does not contain the information requested by respondents, and that the evidence must be obtained from the Central Office of the Immigration and Naturalization Service in Washington D.C. Accordingly, it is respectfully requested that the Special Inquiry Officer issue a subpoena to the Commissioner of the Immigration and Naturalization Service or such other designated representative who may have custody of the information needed by respondents. It is further requested that the Special Inquiry Officer defer the consideration of this point in the respondents' brief until after any available information has been secured from the Central Office of the Immigration Service.

WHEREFORE respondents respectfully request that the Special Inquiry Officer enter an order issuing a subpoena to the Central Office of the Immigration and Naturalization

Service to appear, together with relevant books, records and other data, at an appropriate office of the Immigration and Naturalization Service to give testimony with respect to the matters stated in the request for information dated May 1, 1972, deferring consideration of the pertinent point in respondents' brief, and granting such other and further relief as may be just in the premises.

Respectfully submitted,

LEON WILDES
Attorney for the Respondents
515 Madison Avenue
New York, New York 10022

LW:ba
ENCLS.

June 28, 1972

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y. 10022

Re: LENNON, John Winston Ono
A17 597 321
LENNON, Yoko Ono
A19 469 154

Dear Sir:

This is to advise you in accordance with my telephone conversation with you of this date that your request of June 27, 1972 for the issuance of subpoenas for the attendance of government witnesses is denied.

The reasons for such denial will be set forth in my decision on the merits of the case.

This is to advise you also that in view of the fact that July 1st falls on a Saturday, you will have until the close of business July 3, 1972 and no further to file your brief in this matter, on all issues.

Very truly yours,

IRA FIELDSTEEL
Special Inquiry Officer

CC: Vincent A. Schiano
Chief Trial Attorney

IF:ck

Dangerous Drugs Act 1965

CHAPTER 15

ARRANGEMENT OF SECTIONS

PART I

RAW OPIUM, COCA LEAVES, POPPY-STRAW, CANNABIS, &c.

Section

1. Drugs to which Part I applies.
2. Restriction of importation of drugs to which Part I applies.
3. Restriction of exportation of drugs to which Part I applies.
4. Power to control production, sale, &c., of drugs to which Part I applies.
5. Penalization of permitting premises to be used for smoking cannabis, &c.
6. Penalization of intentional cultivation of cannabis plant.

PART II

PREPARED OPIUM

7. Prohibition of importation and exportation of prepared opium.
8. Penalization of manufacture, sale, use, &c., of prepared opium.
9. Meaning of " prepared opium ".

PART III

OTHER DRUGS, AND INTERMEDIATE PRODUCTS OF SYNTHESIS THEREOF

10. Restriction of importation and exportation of substances specified in Part I, but not falling within Part II, of Schedule.
11. Power to control manufacture, sale, &c., of substances specified in Part I of Schedule.
12. Power of Her Majesty in Council to amend Schedule.

A

PART IV

GENERAL

Miscellaneous Offences

Section
13. Miscellaneous offences.

Powers of Search and Arrest

14. Entry and search of premises, &c., to obtain evidence of offences.
15. Power of arrest.

Penalties, &c.

16. Penalties.
17. Forfeiture and disposal of articles in respect of which offences are committed.
18. Attempts, &c., to commit offences.
19. Offences by companies.
20. Legal proceedings.

Supplementary

21. Licences and authorities.
22. Parliamentary control of regulation-making powers.
23. Meaning of " corresponding law ".
24. General interpretation.
25. Saving for powers of Parliament of Northern Ireland.
26. Consequential amendment of Customs and Excise Act 1952.
27. Repeal and savings.
28. Short title.

SCHEDULE—Substances dealings in which are subject to control under Part III.

ELIZABETH II

1965 CHAPTER 15

An Act to consolidate the Dangerous Drugs Acts 1951 and 1964.

[2nd June 1965]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

RAW OPIUM, COCA LEAVES, POPPY-STRAW, CANNABIS, &C.

Drugs to which Part I applies.

1. The drugs to which this Part of this Act applies are raw opium, coca leaves, poppy-straw, cannabis, cannabis resin and all preparations of which cannabis resin forms the base.

Restriction of importation of drugs to which Part I applies.

2. It shall not be lawful for a person to import into the United Kingdom a drug to which this Part of this Act applies except under a licence granted by a Secretary of State.

Restriction of exportation of drugs to which Part I applies.

3.—(1) It shall not be lawful for a person to export from the United Kingdom a drug to which this Part of this Act applies except under a licence granted by a Secretary of State.

(2) If at any time the importation into a foreign country of a drug to which this Part of this Act applies is prohibited or restricted by the laws of that country, there shall, while that prohibition or restriction is in force, be attached to every licence which is issued by a Secretary of State under this Act authorising the export of that drug from the United Kingdom such conditions as appear to him necessary for preventing or restricting, as the case may be, the exportation of that drug from the United Kingdom to that country during such time

PART I

as the importation of that drug into that country is so prohibited or restricted, and any such licence issued before the prohibition or restriction came into force shall, if a Secretary of State by order so directs, be deemed to be subject to the like conditions.

Power to control production, sale, &c., of drugs to which Part I applies.

4.—(1) A Secretary of State may by regulations provide for controlling or restricting the production, possession, sale and distribution of drugs to which this Part of this Act applies, and in particular, but without prejudice to the generality of the foregoing power, for prohibiting the production, possession, sale or distribution of any such drug except by persons licensed or otherwise authorised in that behalf by a Secretary of State.

(2) This section shall, in its application to Northern Ireland, have effect with the substitution, for references to a Secretary of State, of references to the Ministry of Home Affairs for Northern Ireland.

Penalization of permitting premises to be used for smoking cannabis, &c.

5. If a person—

(*a*) being the occupier of any premises, permits those premises to be used for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin (whether by sale or otherwise); or

(*b*) is concerned in the management of any premises used for any such purpose as aforesaid;

he shall be guilty of an offence against this Act.

Penalization of intentional cultivation of cannabis plant.

6.—(1) A person who, except under a licence granted by a Secretary of State, knowingly cultivates any plant of the genus cannabis shall be guilty of an offence against this Act.

(2) This section shall, in its application to Northern Ireland, have effect with the substitution, for the reference to a Secretary of State, of a reference to the Ministry of Home Affairs for Northern Ireland.

PART II

PREPARED OPIUM

Prohibition of importation and exportation of prepared opium.

7. It shall not be lawful for a person to import into, or to export from, the United Kingdom, any prepared opium.

Penalization of manufacture, sale, use, &c., of prepared opium.

8. If a person—

(*a*) manufactures, sells or otherwise deals in prepared opium; or

(*b*) has in his possession any prepared opium; or

(c) being the occupier of any premises, permits those premises to be used for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium; or PART II

(d) is concerned in the management of any premises used for any such purpose as aforesaid; or

(e) has in his possession any pipes or other utensils for use in connection with the smoking of opium or any utensils used in connection with the preparation of opium for smoking; or

(f) smokes or otherwise uses prepared opium or frequents a place used for the purpose of opium smoking;

he shall be guilty of an offence against this Act.

Meaning of "prepared opium".

9. In this Part of this Act the expression "prepared opium" means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked.

PART III

OTHER DRUGS, AND INTERMEDIATE PRODUCTS OF SYNTHESIS THEREOF

Restriction of importation and exportation of substances specified in Part I, but not falling within Part II, of Schedule.

10. It shall not, except under a licence granted by a Secretary of State, be lawful for a person to import into, or to export from, the United Kingdom a substance for the time being specified in Part I of the Schedule to this Act, other than a preparation or other substance for the time being falling within Part II of that Schedule.

Power to control manufacture, sale, &c., of substances specified in Part I of Schedule.

11.—(1) For the purpose of preventing the improper use of the substances for the time being specified in Part I of the Schedule to this Act, a Secretary of State may by regulations provide for controlling the manufacture, sale, possession and distribution of those substances, and in particular, but without prejudice to the generality of the foregoing power, for—

(a) prohibiting the manufacture of a substance for the time being so specified except on premises licensed for the purpose by a Secretary of State and subject to any conditions specified in the licence;

(b) prohibiting the manufacture, sale or distribution of a substance for the time being so specified except by persons licensed or otherwise authorised under the regulations by a Secretary of State and subject to any conditions specified in the licence or authority;

PART III

(*c*) regulating the issue by medical practitioners of prescriptions containing a substance for the time being so specified and the dispensing of any such prescriptions; and

(*d*) requiring persons engaged in the manufacture, sale or distribution of a substance for the time being so specified to keep such books and furnish such information either in writing or otherwise as may be prescribed by the regulations.

(2) The regulations under this section shall provide for authorising a person lawfully carrying on business in accordance with the provisions of the Pharmacy and Poisons Act 1933 as an authorised seller of poisons— 1933 c. 25.

(*a*) in the ordinary course of his retail business to manufacture, at any premises duly registered under Part I of that Act, any preparation, admixture or extract of a substance for the time being specified in Part I of the Schedule to this Act; or

(*b*) to carry on at any such premises as aforesaid the business of retailing, dispensing or compounding any such substance;

subject to the power of the Secretary of State to withdraw the authorisation in the case of a person who has been convicted of an offence against this Act or either of the former Acts relating to dangerous drugs or of an offence under the Customs and Excise Act 1952 or the enactments repealed thereby, being an offence in relation to a drug or other substance whose importation or exportation was prohibited or restricted by this Act or either of the said former Acts, and who cannot, in the opinion of the Secretary of State, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such substance as aforesaid; but the Secretary of State shall, before withdrawing the authorisation in the case of any such person, consult the Council of the Pharmaceutical Society of Great Britain. 1952 c. 44.

(3) Nothing in any regulations made under this section shall be taken to authorise the sale by retail of poisons by a person who is not qualified in that behalf under, or otherwise than in accordance with, the provisions of the Pharmacy and Poisons Act 1933 and the Pharmacy and Medicines Act 1941 or to be in derogation of the provisions of those Acts for prohibiting, restricting or regulating the sale of poisons. 1941 c. 42.

(4) This section shall, in its application to Northern Ireland, have effect with the substitution, in subsection (1) thereof, for references to a Secretary of State, of references to the Ministry

of Home Affairs for Northern Ireland and with the substitution, for subsections (2) and (3) thereof, of the following subsections:— PART III

"(2) The regulations under this section shall provide for authorising a person who lawfully keeps open shop for the retailing of poisons in accordance with the provisions of the Pharmacy and Poisons Acts (Northern Ireland) 1925 to 1955—

(*a*) to manufacture at the shop in the ordinary course of his retail business any preparation, admixture or extract of a substance for the time being specified in Part I of the Schedule to this Act; or

(*b*) to carry on at the shop the business of retailing, dispensing or compounding any such substance;

subject to the power of the Ministry of Home Affairs for Northern Ireland to withdraw the authorisation in the case of a person who has been convicted of an offence against this Act or either of the former Acts relating to dangerous drugs or of an offence under the Customs and Excise Act 1952 or the enactments repealed thereby, being an offence in relation to a drug or other substance whose importation or exportation was prohibited or restricted by this Act or either of the said former Acts and who cannot, in the opinion of that Ministry, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such substance; but the said Ministry shall, before withdrawing the authorisation in the case of any such person, consult the Council of the Pharmaceutical Society of Northern Ireland. 1952 c. 44.

(3) Nothing in any regulations made under this section shall be taken to authorise the sale, or the keeping of an open shop for the retailing, dispensing or compounding, of poisons by a person who is not qualified in that behalf under, or otherwise than in accordance with, the provisions of the Pharmacy and Poisons Acts (Northern Ireland) 1925 to 1955, or to be in derogation of the provisions of those Acts for prohibiting, restricting or regulating the sale of poisons".

Power of Her Majesty in Council to amend Schedule.

12. If—

(*a*) it appears to Her Majesty that a decision of the Commission or of the Organisation to alter any of the Schedules to the Single Convention or to apply to a substance measures of control applicable under that Convention to substances specified in Schedule 1 thereto, requires the addition of a substance to, or the removal of a substance from, Part I or II of the Schedule to this Act or both the removal of a substance

PART III

from Part I of that Schedule and the removal of a substance from Part II thereof; or

(*b*) it appears to Her probable that there will be taken such a decision as aforesaid of the Commission or of the Organisation as will require the addition of a substance to Part I of the Schedule to this Act and that, in the circumstances of the case, it is expedient to anticipate the decision;

She may by Order in Council make the requisite modifications in the said Schedule.

PART IV

GENERAL

Miscellaneous Offences

Miscellaneous offences.

13. A person—

(*a*) who acts in contravention of, or fails to comply with, a regulation made under this Act; or

(*b*) who acts in contravention of, or fails to comply with, the conditions of a licence issued or authority granted under, or in pursuance of, this Act; or

(*c*) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant or renewal of any such licence or authority as aforesaid, makes a declaration or statement which is false in any particular, or knowingly utters, produces or makes use of any such declaration or statement or a document containing the same; or

(*d*) who in the United Kingdom aids, abets, counsels or procures the commission in a place outside the United Kingdom of an offence punishable under the provisions of a corresponding law in force in that place, or does an act preparatory to, or in furtherance of, an act which if committed in the United Kingdom would constitute an offence against this Act;

shall be guilty of an offence against this Act.

Powers of Search and Arrest

Entry and search of premises, &c., to obtain evidence of offences.

14.—(1) A constable or other person authorised in that behalf by a general or special order of a Secretary of State (or in Northern Ireland either of a Secretary of State or of the Ministry of Home Affairs for Northern Ireland) shall, for the purposes of the execution of Parts I, II and III of this Act, have power to enter the premises of a person carrying on the business of a producer, manufacturer, seller or distributor

PART IV

of any drugs to which Part I or II of this Act applies or any substances for the time being specified in Part I of the Schedule to this Act, and to demand the production of, and to inspect, any books or documents relating to dealings in any such drugs or substances and to inspect any stocks of any such drugs or substances.

(2) If a justice of the peace (or in Scotland either a justice of the peace or a sheriff) is satisfied by information on oath that there is reasonable ground for suspecting—

(*a*) that any drugs to which Part I or II of this Act applies or any substances for the time being specified in Part I of the Schedule to this Act are, in contravention of the provisions of this Act or any regulations made thereunder, in the possession or under the control of a person in any premises; or

(*b*) that a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would if carried out be, an offence against this Act, or in the case of a transaction or dealing carried out or intended to be carried out in a place outside the United Kingdom, an offence against the provisions of a corresponding law in force in that place, is in the possession or under the control of a person in any premises,

he may grant a search warrant authorising any constable named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found therein and, if there is reasonable ground for suspecting that an offence against this Act has been committed in relation to any such drugs or substances as aforesaid which may be found in the premises or in the possession of any such persons, or that a document which may be so found is such a document as is mentioned in paragraph (*b*) of this subsection, to seize and detain those drugs or substances or that document, as the case may be.

(3) If a person wilfully delays or obstructs a person in the exercise of his powers under this section or fails to produce, or conceals or attempts to conceal, any such books, stocks, drugs, substances or documents as aforesaid, he shall be guilty of an offence against this Act.

Power of arrest.

15. A constable may arrest without warrant a person who has committed, or attempted to commit, or is reasonably suspected by the constable of having committed or attempted to commit

PART IV

an offence against this Act, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to, and cannot be ascertained by, him.

Penalties, &c.

Penalties.

16.—(1) Every person guilty of an offence against this Act shall, in respect of each offence, be liable (subject to the next following subsection)—

(*a*) on conviction on indictment, to a fine not exceeding £1,000 or to imprisonment for a period not exceeding ten years, or to both; or

(*b*) on summary conviction, to a fine not exceeding £250 or to imprisonment for a term not exceeding twelve months, or to both.

(2) No person shall, on conviction for an offence against this Act consisting in a contravention of, or failure to comply with, a regulation under this Act relating to the keeping of books or the issuing or dispensing of prescriptions containing drugs to which Part I or II of this Act applies or substances for the time being specified in Part I of the Schedule to this Act, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding £50, if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connection with, the commission or intended commission of any other offence against this Act.

Forfeiture and disposal of articles in respect of which offences are committed.

17. A person convicted of an offence against this Act shall forfeit to Her Majesty all articles in respect of which the offence was committed, and the court before which he is convicted may order those articles to be destroyed or otherwise disposed of as the court thinks fit.

Attempts, &c., to commit offences.

18. If a person attempts to commit an offence against this Act, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable on summary conviction to the same punishment and forfeiture as if he had committed an offence against this Act.

Offences by companies.

19. Where a person convicted of an offence against this Act is a company, the chairman and every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

PART IV

Legal proceedings.

20.—(1) No person shall—

(*a*) in England or Wales, be proceeded against by indictment for an offence against this Act unless the proceedings are instituted by, or with the consent of, the Attorney General or by the Director of Public Prosecutions;

(*b*) in Northern Ireland, be proceeded against as aforesaid unless the proceedings are instituted by, or with the consent of, the Attorney General for Northern Ireland:

Provided that paragraph (*a*) of this subsection shall not apply where the person charged claims, in pursuance of section 25 of the Magistrates' Courts Act 1952, to be tried by a jury. 1952 c. 55.

(2) Any proceedings before a court of summary jurisdiction for an offence against this Act or for attempting to commit or soliciting or inciting another person to commit such an offence may, notwithstanding any enactment prescribing the time within which proceedings may be brought, be brought either within the time so prescribed or within three months from the date on which evidence sufficient in the opinion of a Secretary of State to justify a prosecution for the offence comes to his knowledge, whichever is the longer; and for the purposes of this subsection a certificate purporting to be signed by a Secretary of State as to the date on which such evidence as aforesaid comes to his knowledge shall be conclusive evidence thereof.

In the application of this subsection to Scotland references to the Lord Advocate, and in the application of this subsection to Northern Ireland references to the Attorney General for Northern Ireland, shall be substituted for the references to a Secretary of State.

(3) For the avoidance of doubt it is hereby declared that in any proceedings against a person for an offence against this Act it is not necessary to negative by evidence a licence, authority or other matter of exception or defence, and that the burden of proving any such matter lies on the person seeking to avail himself thereof.

Supplementary

Licences and authorities.

21. A licence or authority issued or granted for the purposes of this Act by a Secretary of State or the Ministry of Home Affairs for Northern Ireland may be issued or granted on such terms and subject to such conditions (including, in the case of a licence, the payment of a fee) as the Secretary of State or the said Ministry, as the case may be, thinks proper.

PART IV
Parliamentary control of regulation-making powers.

22.—(1) Any power to make regulations conferred by this Act on a Secretary of State shall be exercisable by statutory instrument, and a statutory instrument made in exercise of any such power shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Every regulation made under this Act by the Ministry of Home Affairs for Northern Ireland shall be laid forthwith before each House of the Parliament of Northern Ireland, and if an Address is presented to the Governor of Northern Ireland within the period hereinafter mentioned praying that the regulation may be annulled, the Governor of Northern Ireland in Council may annul the regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

The period referred to in the foregoing provisions of this subsection is, in relation to either House of the Parliament of Northern Ireland, a period beginning with the day following that on which the regulation is laid before it and comprising ten days at least on which that House has sat, but not being in any case shorter in duration than twenty days; and days comprised in more than one Session of the Parliament of Northern Ireland may be reckoned for the purposes of this provision.

Meaning of "corresponding law".

23.—(1) In this Act the expression "corresponding law" means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside the United Kingdom to be a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention or a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs in accordance with the provisions of the Hague Convention, the Geneva Convention (No. 1) and the Geneva Convention (No. 2) as respectively amended by the Protocol.

(2) A statement in any such certificate as aforesaid as to the effect of the law mentioned in the certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive.

General interpretation.

24.—(1) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"cannabis" (except where used in the expression 'cannabis resin') means the flowering or fruiting tops of any plant of the genus cannabis from which the resin has not been extracted, by whatever name they may be designated;

PART IV

"cannabis resin" means the separated resin, whether crude or purified, obtained from any plant of the genus cannabis;

"coca leaves" means the leaves of any plant of the genus of the erythroxylaceæ from which cocaine can be extracted, either directly or by chemical transformation;

"the Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;

"former Acts relating to dangerous drugs" means the Dangerous Drugs Act 1920 and the Dangerous Drugs Act 1951; 1920 c. 46. 1951 c. 48.

"the Geneva Convention (No. 1)" means the International Opium Convention signed at Geneva on 19th February 1925;

"the Geneva Convention (No. 2)" means the Convention signed at Geneva on 13th July 1931, being the Convention for the purpose of supplementing the Geneva Convention (No. 1) and the Hague Convention;

"the Hague Convention" means the International Opium Convention signed at the Hague on 23rd January 1912;

"medicinal opium" means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopœia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

"opium poppy" means the plant of the species *Papaver somniferum L.*;

"the Organisation" means the World Health Organisation;

"poppy-straw" means all parts except the seeds of the opium poppy, after mowing;

"the Protocol" means the Protocol on Narcotic Drugs signed at Lake Success, New York, on 11th December 1946;

"raw opium" includes powdered or granulated opium, but does not include medicinal opium;

"the Single Convention" means the Single Convention on Narcotic Drugs signed at New York on 30th March 1961.

(2) The specification in paragraph 1 of the Schedule to this Act of a substance shall, if the existence of isomers of that substance is possible within the specific chemical designation thereof, be taken to comprehend the specification of any isomer of that substance whose existence is possible as aforesaid; and

PART IV

references in paragraphs 2, 3, 8, 13 and 14 of that Schedule to a substance for the time being specified in the said paragraph 1 shall be construed accordingly.

(3) For the purposes of this Act, an article shall be deemed to be imported under licence or exported under licence if the importer or exporter, as the case may be, is the holder of a licence issued under this Act authorising the importation or exportation, as the case may be, of the article and complies with the conditions, if any, of the licence, but not otherwise.

Saving for powers of Parliament of Northern Ireland. 1920 c. 67.

25. For the purposes of section 6 of the Government of Ireland Act 1920 (which relates to the powers of the Parliament of Northern Ireland to make laws) this Act shall be deemed to have been passed before the day appointed for the purposes of that section.

Consequential amendment of Customs and Excise Act 1952. 1952 c. 44.

26. For the purposes of any proceedings under section 45, 56 or 304 of the Customs and Excise Act 1952 for an offence in connection with the importation or exportation of drugs or other substances in contravention of this Act, section 16 of this Act shall not be taken expressly to provide a penalty for that offence; and for the purposes of any such proceedings in connection with the importation or exportation of drugs or other su' tances in contravention of the Dangerous Drugs Act 1951, section 15 of that Act shall not be taken expressly to have provided a penalty for that offence. 1951 c. 48.

Repeal and savings. 1964 c. 36.

27.—(1) The Dangerous Drugs Act 1951, section 320(3) of the Customs and Excise Act 1952 and the Dangerous Drugs Act 1964 are hereby repealed.

(2) In so far as any order or regulation made, licence issued, authority or warrant granted or other thing done under an enactment repealed by this Act (except section 2 of the Dangerous Drugs Act 1964) could have been made, issued, granted or done under a corresponding provision of this Act, it shall not be invalidated by the repeal effected by the foregoing subsection, but shall have effect as if it had been made, granted, issued or done under that corresponding provision. 1964 c. 36.

(3) Any document referring to an enactment repealed by this Act shall, so far as may be necessary for preserving the effect thereof, be construed as referring, or as including a reference, to the corresponding enactment in this Act.

(4) The mention of particular matters in this section shall not be taken to affect the general application of section 38 of the Interpretation Act 1889 with regard to the effect of repeals. 1889 c. 63.

Short title.

28. This Act may be cited as the Dangerous Drugs Act 1965.

SCHEDULE

SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL UNDER PART III

Sections 10, 11, 12, 13, 16, 24.

PART I

SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL EXCEPT, IN THE CASE OF ANY SPECIFIED IN PART II BELOW, AS REGARDS IMPORTATION AND EXPORTATION

1. The following substances, namely:—

Acetyldihydrocodeine.
Allylprodine.
Alphacetylmethadol.
Alphameprodine.
Alphamethadol.
Alphaprodine.
Anileridine.
Benzethidine.
Benzylmorphine (3-benzylmorphine).
Betacetylmethadol.
Betameprodine.
Betamethadol.
Betaprodine.
Clonitazene.
Cocaine.
Codeine.
Desomorphine.
Dextromoramide.
Dextropropoxyphene.
Diamorphine.
Diampromide (N-[2-(N-methylphenethylamino) propyl] propionanilide).
Diethylthiambutene.
Dihydrocodeine.
Dihydromorphine.
Dimenoxadole.
Dimepheptanol.
Dimethylthiambutene.
Dioxaphetyl butyrate.
Diphenoxylate.
Dipipanone.
Ecgonine.
Ethylmethylthiambutene.
Ethylmorphine (3-ethylmorphine).
Etonitazene.
Etoxeridine.
Fentanyl.
Furethidine.
Hydrocodone (dihydrocodeinone).
Hydromorphinol.
Hydromorphone.
Hydroxypethidine.
Isomethadone.
Ketobemidone.
Levomethorphan.
Levomoramide.
Levophenacylmorphan.
Levorphanol.
Metazocine.
Methadone.
Methadyl acetate.
Methyldesorphine.
Methyldihydromorphine (6-methyldihydromorphine).
Metopon.
Morpheridine.
Morphine.
Morphine methobromide, morphine-N-oxide and other pentavalent nitrogen morphine derivatives.
Myrophine.
Nicocodine.
Nicomorphine (3,6-dinicotinoylmorphine).
Noracymethadol.
Norcodeine.
Norlevorphanol.
Normethadone.
Normorphine.
Norpipanone.
Oxycodone.
Oxymorphone.
Pethidine.
Phenadoxone.
Phenampromide.
Phenazocine.
Phenomorphan.
Phenoperidine.
Pholcodine.

SCH. 1

Piminodine.
Proheptazine.
Properidine (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester).
Racemethorphan.
Racemoramide.
Racemorphan.
Thebacon.
Thebaine.
Trimeperidine.
4-Cyano-2-dimethylamino-4, 4-diphenylbutane.
4-Cyano-1-methyl-4-phenylpiperidine.
1-Methyl-4-phenylpiperidine-4-carboxylic acid.
2-Methyl-3-morpholino-1, 1-diphenylpropanecarboxylic acid.
4-Phenylpiperidine-4-carboxylic acid ethyl ester.

2. Any ester (other than one expressly mentioned in paragraph 1 above) or ether (other than one so mentioned) of a substance for the time being specified in that paragraph.

3. Any salt of a substance for the time being specified in paragraph 1 or 2 above.

4. Any derivative of ecgonine which is convertible to ecgonine or to cocaine.

5. Concentrate of poppy-straw (that is to say, the material arising when poppy-straw has entered into a process for the concentration of its alkaloids).

6. Medicinal opium.

7. Any extract or tincture of cannabis.

8. Any preparation, admixture, extract or other substance containing any proportion of a substance for the time being specified in paragraph 1 above or in any of paragraphs 2 to 7 above.

PART II

PREPARATIONS AND OTHER SUBSTANCES FALLING WITHIN PART I WHOSE IMPORTATION AND EXPORTATION IS EXCEPTED FROM CONTROL

9.—(1) A preparation of not more than one of the substances to which this paragraph applies, when—

(*a*) compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and that the substance cannot be recovered by readily applicable means or in a yield which would constitute a risk to health; and

(*b*) containing not more than 100 milligrammes of the substance per dosage unit and with a concentration of not more than 2·5 per cent. in undivided preparations.

(2) The substances to which this paragraph applies are acetyldihydrocodeine, codeine, dextropropoxyphene, dihydrocodeine, ethylmorphine (3-ethylmorphine), norcodeine, pholcodine and their respective salts.

10. A preparation of cocaine containing not more than 0·1 per cent. of cocaine calculated as cocaine base, being a preparation compounded with one or more other ingredients in such a way that the preparation

has no, or a negligible, risk of abuse and that the cocaine cannot be recovered by readily applicable means or in a yield which would constitute a risk to health. SCH. 1

11. A preparation of medicinal opium or of morphine containing (in either case) not more than 0·2 per cent. of morphine calculated as anhydrous morphine base, being a preparation compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse and that the opium or, as the case may be, the morphine, cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.

12. Solid dose preparations of diphenoxylate containing, per dosage unit, not more than 2·5 milligrammes of diphenoxylate calculated as base and not less than 25 microgrammes of atropine sulphate.

13. Pulvis Ipecacuanhae et Opii Compositus:—

10 per cent. opium, in powder,
10 per cent. Ipecacuanha root, in powder,

well mixed with

80 per cent. of any other powdered ingredient containing neither a drug to which Part I or II of this Act applies nor a substance for the time being specified in paragraph 1 of this Schedule or in any of paragraphs 2 to 8 thereof.

14. Mixtures containing not more than one of the preparations specified in paragraphs 9 to 13 above, being mixtures whereof none of the other ingredients is either a drug to which Part I or II of this Act applies or a substance for the time being specified in paragraph 1 of this Schedule or in any of paragraphs 2 to 8 thereof.

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STATUTORY INSTRUMENTS

1964 No. 1811

DANGEROUS DRUGS

The Dangerous Drugs (No. 2) Regulations 1964

Made - - - -	*13th November* 1964
Laid before Parliament	*19th November* 1964
Coming into Operation	*1st December* 1964

ARRANGEMENT OF REGULATIONS

PART I

CONTROL OF RAW OPIUM, &c.

Regulation

1. Application to drugs to which Part I of the Dangerous Drugs Act 1951 applies.
2. Supply, procuring and advertising of drugs.
3. Possession of drugs.
4. General authority for certain classes of persons to possess and supply drugs.
5. Keeping of register.

PART II

CONTROL OF SUBSTANCES FALLING WITHIN PART I OF SCHEDULE 1 TO THE DANGEROUS DRUGS ACT 1964

6. Application to substances falling within Part I of Schedule 1 to the Dangerous Drugs Act 1964.
7. Manufacture of drugs.
8. Supply, procuring and advertising of drugs and preparations.
9. Possession of drugs and preparations.
10. General authority for certain classes of persons to possess and supply drugs and preparations.
11. Prohibition on prescribing.
12. General authority for authorised sellers of poisons to manufacture preparations and retail drugs and preparations.
13. Special provisions in respect of owners and masters of ships, farmers and stockowners, and certified midwives.
14. Form of prescription.
15. Provisions as to supply on prescription.
16. Marking of packages and bottles.
17. Keeping of register or other records.
18. Exemption of certain prescriptions.

PART III
GENERAL
19. Definition of "drug".
20. Definition of "possession".
21. Supply otherwise than on prescription.
22. Withdrawal of authority.
23. Withdrawal of authority in Northern Ireland.
24. Consignment between places outside Great Britain.
25. Requirements as to registers.
26. Preservation of documents.
27. Exemption of constables and carriers.
28. Agents acting in the transfer of business and stock-in-trade.
29. Construction of licence or authority.
30. Revocation of licence or group authority.
31. Metric system and imperial system.
32. Interpretation.
33. Revocation.
34. Extent.
35. Citation and commencement.

SCHEDULES
SCHEDULE 1
Form of register.
SCHEDULE 2
Drugs and preparations to which Part II of these Regulations applies with certain modifications.
SCHEDULE 3
Form of certificate.

In pursuance of the powers conferred on me by section 2 of the Dangerous Drugs Act 1951(a) and section 9 of that Act as amended by section 1(2) of the Dangerous Drugs Act 1964(b), I hereby make the following Regulations:—

PART I

CONTROL OF RAW OPIUM, &C.

Application to drugs to which Part I of the Dangerous Drugs Act 1951 applies

1. This Part of these Regulations shall apply to any drug, resin or preparation, other than poppy-straw and extract or tincture of cannabis, to which Part I of the Dangerous Drugs Act 1951 as amended by the Dangerous Drugs Act 1964 applies, and hereafter in this Part of these Regulations the expression "drug" means any such drug, resin or preparation as aforesaid.

Supply, procuring and advertising of drugs

2.—(1) A person shall not supply or procure, or offer to supply or procure, to or for any person, including himself, whether in Great Britain or else-

(a) 14 & 15 Geo. 6. c. 48. (b) 1964 c. 36.

where, or advertise for sale, a drug, unless he is generally authorised, or, under this Regulation, licensed or authorised as a member of a group so to do, nor otherwise than in accordance with the provisions of these Regulations and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

(2) (*a*) A person shall not supply or procure, or offer to supply or procure, a drug to or for any person in Great Britain unless that person is generally authorised, or, under Regulation 3 of these Regulations, licensed or authorised as a member of a group to be in possession of the drug and the drug is to be supplied or procured in accordance with the provisions of these Regulations and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

(*b*) A person shall not in Great Britain supply or procure, or offer to supply or procure, a drug to or for any person in Northern Ireland or the Isle of Man unless that person is entitled to be in possession of the drug and the drug is to be supplied or procured in accordance with the terms and conditions of that person's entitlement.

In this sub-paragraph "entitled" means entitled under any permission (by whatever name called) issued by, as the case may be, the Ministry of Home Affairs for Northern Ireland or the Lieutenant-Governor of the Isle of Man, or entitled under any provision relating to the drug and in force in, as the case may be, Northern Ireland or the Isle of Man and "entitlement" shall be construed accordingly.

Possession of drugs

3. A person shall not be in possession of a drug unless he is generally so authorised or, under this Regulation, so licensed or authorised as a member of a group, nor otherwise than in accordance with the provisions of these Regulations and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

General authority for certain classes of persons to possess and supply drugs

4.—(1) Subject to the provisions of these Regulations a person who is a member of any of the following classes, that is to say:—

(*a*) duly qualified medical practitioners;

(*b*) registered veterinary surgeons and registered veterinary practitioners;

(*c*) authorised sellers of poisons;

(*d*) registered pharmaceutical chemists who are employed or engaged at a hospital, infirmary, health centre or dispensary wholly or mainly maintained by a public authority out of public funds or by a charity or by voluntary subscriptions and whose duties in that employment or engagement include the dispensing or supply of medicines for that or any other such institution;

(*e*) persons who are in charge of a laboratory used for the purposes of research or instruction and attached to—

(i) a university, university college or such a hospital or infirmary as aforesaid,

(ii) any other institution approved for the purposes of this Regulation by the Secretary of State;

(*f*) public analysts under and within the meaning of the Food and Drugs Act 1955(a) or, in Scotland, the Food and Drugs (Scotland) Act 1956(b);

(a) 4 & 5 Eliz. 2. c. 16. (b) 4 & 5 Eliz. 2. c. 30.

(g) persons acting as sampling officers under and within the meaning of the said Acts;

(h) persons duly appointed by the Pharmaceutical Society of Great Britain as inspectors under section 25 of the Pharmacy and Poisons Act 1933(a),

shall be authorised, so far as may be necessary for the practice or exercise of his said profession, function or employment, and in his capacity as a member of his said class, to be in possession of and to supply drugs.

(2) Every drug in the actual custody of a person authorised by virtue of this Regulation to be in possession thereof shall, except when the necessities of the practice of the profession, function or employment, by virtue of which that person is authorised as aforesaid otherwise require, be kept in a locked receptacle which can be opened only by him or by some other person authorised by virtue of this Regulation to be in possession of the drug.

Keeping of register

5. Every person generally authorised or licensed or authorised as a member of a group to supply any drugs shall comply with the following provisions, that is to say:—

(a) he shall, in accordance with the provisions of this Regulation and Regulation 25 of these Regulations, keep a register and enter therein in chronological sequence in the form specified in, as the case may be, Part I or Part II of Schedule 1 to these Regulations, true particulars with respect to every quantity of any drug obtained by him and with respect to every quantity of any drug supplied by him whether to persons within or to persons outside Great Britain;

(b) he shall use a separate register or separate part of the register with respect to each of the following classes of drugs, that is to say:—

(i) raw opium,

(ii) coca leaves,

(iii) cannabis and cannabis resin and all preparations (other than extract and tincture of cannabis) of which cannabis resin forms the base.

PART II

CONTROL OF SUBSTANCES FALLING WITHIN PART I OF SCHEDULE 1 TO THE DANGEROUS DRUGS ACT 1964

Application to substances falling within Part I of Schedule 1 to the Dangerous Drugs Act 1964

6.—(1) This Part of these Regulations shall apply to any substance for the time being falling within Part I of Schedule 1 to the Dangerous Drugs Act 1964.

(2) In the following provisions of this Part of these Regulations the expression "drug" means any substance to which this Part of these Regulations applies other than a preparation as defined for the purpose of this Part of these Regulations in paragraph (3) of this Regulation.

(3) In this Part of these Regulations the expression "preparation" means any preparation, admixture, extract or other substance containing any proportion of a substance to which this Part of these Regulations applies.

(a) 23 & 24 Geo. 5. c. 25.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form approved
OMB No. 43-R0104

APPLICATION FOR A SEARCH OF THE RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE

TAKE OR MAIL TO —
Immigration and Naturalization Service

Fee Stamp

054629

TYPE OR PRINT THE NAME AND MAILING ADDRESS OF THE PERSON TO WHOM INFORMATION OR COPIES OF RECORD SHOULD BE RETURNED UNDER THE LINE BELOW.

Leon Wildes, Esq.
515 Madison Avenue
New York, New York 10022

(See Instruction 3 on reverse)

PERSON CONSENTING

BASIS AND ADDRESS

SIGNATURE OF PERSON CONSENTING

1. SPECIFIC INFORMATION DESIRED
Copy of decision of SIO dated September 23, 1971; copy of determination by I&NS counsel not to take appeal from said decision

2. STATE PURPOSE FOR WHICH DESIRED
To cite above data in appeal of another case to the Board of Immigration Appeals

IF INFORMATION IS FOR SOCIAL SECURITY BENEFITS, SHOW SOCIAL SECURITY NO.:

DATA FOR IDENTIFICATION OF THE RECORD

3. FAMILY NAME	GIVEN NAME	MIDDLE NAME	4. ALIEN REGISTRATION NUMBER
GRAY	Basil	F.	A30 310 271

5. OTHER NAMES USED, IF ANY	6. NAME USED AT TIME OF ENTRY
other data unknown	

7. PLACE OF BIRTH	8. DATE OF BIRTH	9. PORT ABROAD FROM WHICH LEFT FOR UNITED STATES

10. PORT OF ENTRY	11. DATE OF ENTRY	12. NAME OF VESSEL OR OTHER MEANS OF ENTRY
Houlton, Maine	8/18/71	

GIVE THE FOLLOWING INFORMATION IF THE PERSON WAS NATURALIZED

13. NAME ON NATURALIZATION CERTIFICATE	14. CERTIFICATE NUMBER	15. NATURALIZATION DATE
n/a		

16. ADDRESS AT TIME OF NATURALIZATION	17. NAME AND LOCATION OF NATURALIZATION COURT

18. SIGNATURE OF APPLICANT

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BOSTON, MASSACHUSETTS 02203

DATE: A-20-310-271
June 29, 1973
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THE RECORDS OF THE IMMIGRATION AND NATURALIZATION SERVICE REFLECT THE FOLLOWING:

- ☐ LAWFUL ADMISSION FOR PERMANENT RESIDENCE ON _____ AT _____.
- ☐ NATURALIZATION INFORMATION AS SHOWN ABOVE IS CORRECT.
- ☐ NATURALIZATION IN (*COURT*) _____ ON (*DATE*) _____
  AT (*LOCATION*) _____.
- ☐ DATE OF BIRTH _____.
- ☐ ARRIVAL RECORD DATED _____ SHOWED SUBJECT'S AGE AT TIME TO BE _____.
- ☐

☒ COPIES ATTACHED AS REQUESTED
Encls.

SIGNATURE Patrick F. Connell
PATRICK F. CONNELL
TITLE District Director

FORM N-565 (REV. 4-1-73) N

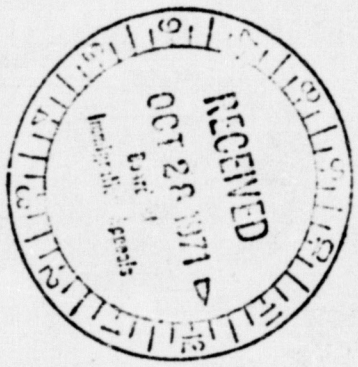
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D.C. 20536

PLEASE ADDRESS REPLY TO

October 28, 1971

AND REFER TO THIS FILE NO.

CO 649-C



Maurice A. Roberts, Chairman
Board of Immigration Appeals
Department of Justice
Washington, D.C. 20536

In re: BASIL FRED GRAY
A30 310 271

Dear Mr. Roberts:

Please be advised that the Service appeal in the subject exclusion proceeding is hereby withdrawn.

Sincerely,

Charles Gordon

Charles Gordon
General Counsel

CC: Richard A. Gargiulo, Esquire
365 Washington Street
Brighton, Mass. 02135

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File No.: A 30 310 271 - Boston, Massachusetts September 23, 1971

In the Matter of)
)
BASIL F. GRAY) IN EXCLUSION PROCEEDINGS
)
Applicant)

APPLICATION: Admission as returning resident - I & N Act Sec. 101(a)(27)(B) (8 U.S.C. 1101(a)(27)(B))

ALLEGEDLY EXCLUDABLE: Sec. 212(a)(23) I & N Act (8 U.S.C. 1182(a)(23)) Convicted for the violation of a law relating to illicit possession of a narcotic drug, to wit: hahish

IN BEHALF OF APPLICANT:

Richard A. Gargiulo, Esq.
365 Washington St.
Brighton, Mass. 02135

IN BEHALF OF SERVICE:

Ralph J. Smith, Esq.
Trial Attorney

ORAL DECISION OF THE SPECIAL INQUIRY OFFICER

This record relates to a 37 year old, single, male alien, a native and citizen of Jamaica, West Indies. He applied for admission into the United States as a returning resident alien at the port of Houlton, Maine on August 18, 1971. He was returning from a vacation trip in Canada of about ten days duration.

The applicant was admitted into the United States for permanent residence on June 20, 1970. (Ex.2). He testified that he has never abandoned his residence in the United States after his admission

On June 20, 1970. He was clearly admissible as a returning resident after a ten day visit in Canada, if he was then otherwise admissible under the Immigration laws.

When the applicant applied for admission into the United States at Houlton, Maine on August 18, 1971, he was paroled, the purpose of the parole being shown as: "to Me. State Police for conviction of narcotic laws." (Ex.3). He was convicted in the District Court of the State of Maine for Southern Aroostock at Houlton on August 19, 1971 for having on August 18, 1971 at Houlton, Maine, been illegally in possession of hashish. Upon conviction, he was fined $200 and sentenced to ten days imprisonment in the county jail, jail sentence suspended upon payment of fine. (Ex.4).

The applicant was referred for hearing before Special Inquiry Officer. The examining Immigration officer found him to be not clearly admissible into the United States because it appeared that he is excludable under Section 212(a)(23) of the Immigration and Nationality Act, in that, he is an alien who has been convicted for violation of a "law relating to the illicit possession of a narcotic drug, to wit: hashish."

The source from which the applicant obtained the hashish which was in his possession has not been established in this record.

It would appear that it was obtained in Canada as the applicant was paroled for prosecution for possession thereof at the time of his application for admission. It is possible that he had it prior to his trip to Canada.

The Board of Immigration Appeals held in Matter of Alvarez-Verduzco 11 I & N Dec. 625, that an alien who went to Mexico to purchase heroin for his own use is not within the rationale of Rosenberg v. Fleuti, 374 U. S. 449. The Board found that the applicant there was violating the laws of the United States by attempting to bring in a narcotic drug upon his return from Mexico even though it was found there that it appeared that the applicant did not go to Mexico for the purpose of buying a drug.

There is no evidence here that the applicant's vacation trip to Canada was for the purpose of buying a drug. However, if the hashish which was involved in the applicant's conviction is a narcotic drug or marihuana, he is excludable on the basis of the conviction for possession thereof. Even if he were admitted, he would become immediately deportable under the provisions of Section 241(a)(11) of the Immigration and Nationality Act because of the same conviction.

In Alvarez-Verduzco, supra, the applicant was paroled for prosecution at the time of his application for admission but he was convicted under the United States Code for attempting to bring into the United States a narcotic drug, in that case, heroin. Here, the respondent was convicted under a state law relating to possession of narcotic drugs or marihuana, to wit: possession of hashish.

Hashish is not referred to in Immigration statutes by name. No attempt was made to establish that hashish is a narcotic drug. However, evidence in the form of a pamphlet of the Bureau of Narcotics and Dangerous Drugs, U. S. Dept. of Justice, and a pamphlet produced jointly by the Department of Defense, Department of Health, Education and Welfare, Department of Justice, Department of Labor and Office of Economic Opportunity, were introduced into evidence. These pamphlets establish that both marihuana and hashish are included under the generic term "Cannabis Sativa." One of the phamphlets (Ex.9) states that hashish is "at least five times stronger than crude marihuana."

The statute under consideration here refers to narcotic drugs, and obviously by its term includes all narcotic drugs, and to

marihuana specifically as a substance. It makes no specific reference to "Cannabis Sativa" or derivatives thereof. It is the government's contention that marihuana and hashish are the same substance and that the words are interchangeable since both are derivatives of Cannabis Sativa. If the framers of the statute intended to include all derivatives of Cannabis Sativa, that term might well have been used in the statute as was the broad term "narcotic drugs."

The applicant attended school for many years in the United States and received a B.A. degree in 1966 from Eastern Nazarene College. Thereafter he engaged in educational and sociological programs doing teaching and research in the field of chemistry. Nine of his former schoolmates, teachers and associates submitted affidavits as to his good character and abilities. (Ex.7). He is currently employed as a tutor in chemistry by Boston University. He has never been arrested either in the United States or elsewhere except on the one charge discussed herein. Upon that single conviction he was fined $200 and a ten day jail sentence was suspended.

The burden of showing admissibility is upon an applicant for admission into the United States. Where the applicant has previously had permanent residence in this country and is returning

thereto, his burden is a mere preponderance of the evidence. The applicant has established beyond dispute that he is in fact a returning resident. In view of his resident alien status and his activities in the United States, as a teacher and researcher, the fact that he has had no previous difficulties with law enforcement authorities in any country, and the light sentence imposed on this conviction, his exclusion and deportation from the United States will not be ordered unless clearly required by law and regulations.

The statute under which it is alleged that the applicant is excludable refers to "narcotic drugs" and to "Marijuana." The applicant was convicted of possession of hashish. There is no allegation here that hashish is a narcotic drug. It is urged that hashish should be included in the term "marijuana" because both are derivatives of Cannabis Sativa. However, neither "hashish" nor "Cannabis Sativa" are mentioned in the statute.

On consideration of this entire record, and in the absence of any law, regulation or decision of the Board or of any court finding that the words "hashish" and "marihuana" are the same or interchangeable, it will be concluded that the applicant has not been convicted in in violation of law relating to possession of a "narcotic drug"

or "marijuana." He appears admissible in all other respects and it will be ordered that he be admitted as a returning resident.

CONCLUSION OF LAW: It is concluded that the applicant is admissible into the United States as a returning resident under the provisions of Section 101(a)(27)(B) of the Immigration and Nationality Act.

ORDER: IT IS ORDERED that the applicant be admitted into the United States as a returning resident alien.

Eugene C. Cassidy

EUGENE C. CASSIDY - SPECIAL INQUIRY OFFICER

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A17 595 321 - New York (1)
A19 489 154 - " " (2)

MAR 2 3 1973

In the Matter of)

JOHN WINSTON ONO LENNON (1))
and
YOKO ONO LENNON (2))

Respondents)

IN DEPORTATION PROCEEDINGS

CHARGES: (Both) Section 241(a)(2) - I & N Act
nonimmigrant - remained longer than permitted

APPLICATION: (Both) Adjustment of Status
Section 245 - I & N Act

In Behalf of Respondents:

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y. 10022

In Behalf of Service:

Vincent Schiano, Esq.
Trial Attorney

DECISION OF THE IMMIGRATION JUDGE

DISCUSSION: The respondents are respectively a 32-year-old married male alien, a native and citizen of England and his 40-year-old alien wife, a native and citizen of Japan, who last entered the United States together at New York, N. Y. on August 13, 1971. At the time of their arrival they were admitted as nonimmigrant visitors for pleasure who were authorized to remain in the United States until February 29, 1972.

On March 1, 1972 the respondents were advised that their temporary stay in the United States as visitors had expired on February 29, 1972 and

that it was expected that they would effect their departure from the United States on or before March 15, 1972. They were advised that failure to do so would result in the institution of deportation proceedings.

On March 6, 1972 a further communication was addressed to the respondents advising them that the District Director for the New York District understood that they had no intention of effecting their departure by March 15, 1972 as previously authorized and that he was therefore revoking the privilege of voluntary departure as provided by existing regulations, Title 8, Code of Federal Regulations 242.5(c). That section provides for the revocation of a previous grant of voluntary departure prior to the commencement of deportation proceedings, where the District Director ascertains that the original application should not have been granted. The record before me does not reflect by what means the District Director acquired the understanding that the respondents had no intention of effecting their departure by March 15, 1972 but he might well have reached such a conclusion from the submission on March 3, 1972 of petitions to have the respondents recognized as entitled to a third preference under their respective quotas, a step which is normally taken as a preliminary to requesting permanent residence in the United States either through the obtaining of a visa outside the United States or through the medium of an application under Section 245 of the Immigration and Nationality Act. In any event the conclusion by the District Director that the respondents did not have the intention of leaving the United States on or before March 15, 1972

appeared to have been a correct one in the light of testimony by Mr. Lennon at page 24 of the record that he had no intention either way prior to March 15, 1972, that he and his wife were looking for her child and that they had not made up their mind either way about it but that they had no exact intention of departing. Furthermore, as of the date of their testimony on May 12, 1972 they were still unable to make up their minds, and stated that if an opportunity were given to them to depart perhaps within the next five or ten days they would not be willing to depart because they still did not know where the child was.

In view of this testimony, although the Immigration and Naturalization Service may have been somewhat precipitous in issuing the Order to Show Cause and beginning deportation proceedings on March 6, 1972 simultaneously with the revocation of the previously authorized permission to remain until March 15, 1972, I cannot see that the respondents were harmed since they were neither prevented from leaving pursuant to that original authorization, nor were they prevented from leaving voluntarily at any subsequent date. Technically speaking the Order to Show Cause would have been more accurate to state that they remained in the United States after March 6, 1972 without authority since that was the date on which their privilege of voluntary departure was revoked, but in the light of their continuing unwillingness to depart from the United States even as late as May 12, 1972, I find that the respondents are deportable under Section 241(a)(2) of the Immigration and Nationality Act as aliens who after admission as nonimmigrants remained in the United States for a longer time than permitted.

Counsel for the respondents devoted a considerable portion of his oral argument during the hearings in this matter, as well as in his extensive briefs to the issue that the Immigration and Naturalization Service did not permit the respondents to file an application for adjustment of status under Section 245 of the Immigration and Nationality Act prior to the commencement of deportation proceedings by service of an Order to Show Cause. Counsel's position is that this is contrary to the official position of the Immigration and Naturalization Service as stated in its published Operations Instructions.

An examination of 8 CFR 245.2 and 8 CFR 242.17 shows that the jurisdiction to consider applications for adjustment of status to that of a permanent resident of the United States under Section 245 of the Immigration and Nationality Act is divided between the District Director having jurisdiction over the aliens place of residence and the Immigration Judge, the former having exclusive jurisdiction prior to the issuance of an Order to Show Cause and the latter having exclusive jurisdiction either for an original application or after the District Director has denied an application, but only after the issuance of an Order to Show Cause. The nature of the Immigration Judge's jurisdiction is thus not only an original jurisdiction but also in the nature of an Appellate jurisdiction where a previous application has been denied by the District Director. The relevant Operations Instruction, Section 245.1 provides as follows: "an otherwise eligible alien who is unlawfully in the United States and who has not heretofore filed a Section 245 application shall normally be afforded an opportunity to file such an application prior to the institution of deportation proceedings". (underlining supplied)

Obviously, the District Director who believes that the prospective applicant for adjustment of status under Section 245 is not a "eligible alien" has no obligation to permit such alien to go through the empty gesture of submitting such an application to him when the inevitable result of such application will be a denial. Accordingly, the Operations Instructions gives the District Director the option of issuing the Order to Show Cause, commencing the deportation proceedings and relegating the alien to submitting his application for such relief to the Immigration Judge for adjudication. The only conceivable advantage to the alien in presenting his application to the District Director prior to the commencement of proceedings would be the one of delay since no appeal lies from the denial of such application by the District Director. On the contrary if such application is denied by the Immigration Judge, an appeal can be taken from such denial to the Board of Immigration Appeals and thereafter to the Courts.

A somewhat similar contention was made in the case of Lumarque v. USINS, C. A. 7, No. 71-1886, Decided June 12, 1972, as yet unreported, where the alien's petition for a third preference visa had been approved. The court noted that as a matter of grace, the United States often grants such a person an opportunity to depart voluntarily and leaves the time for such departure indefinite. Thus, as a matter of practice, beneficiaries of a third preference petition are often permitted to remain in the United States until a visa becomes available. The alien contended that the initial grant of such permission to remain coupled

with a subsequent revocation was discriminatory. The court stated however, that "a grace normally afforded does not become an enforceable right merely because it is described as a normal practice in an internal operating instruction."

The same principle is directly applicable to the instant proceedings. It was for this reason that I refused to issue a subpoena to Officials of the Immigration and Naturalization Service for the purpose of having them testify as to actions they might have taken in other cases involving approved third preferences, particularly since the request for the subpoenas did not request information on cases where the facts were substantially identical with the present one.

See also the decision by the Board of Immigration Appeals in Matter of Geronimo, Int. Dec. 2077 where the Board pointed out that the assertion that the District Director abused his discretion in refusing to permit the respondent to remain in the United States after approval of her visa petition presents no defense cognizable in deportation proceedings. It is within the District Director's prosecutive discretion whether to institute deportation proceedings against a deportable alien or temporarily to withhold such proceeding. Where such proceedings have been begun, it is not the province of the Immigration Judge or of the Board on Appeal to review the wisdom of the District Director's action starting the proceedings, but to determine whether the deportation charge is sustained by the requisite evidence.

It may well be that if these two cases had arisen separately, it would have been appropriate to permit the female respondent to file an application for adjustment of status under Section 245 prior to the commencement of deportation proceedings.

However, in view of the issues which the two cases have in common, and the stated objection by counsel for the respondents to have the two cases severed, it certainly was within the discretion of the District Director, who felt that the case of the male respondent should be heard by an Immigration Judge, to treat the case of the female respondent similarly.

One further circumstance requires attention, before proceeding to a consideration of the application for permanent residence, because it relates not only to that application but also to the deportability of the female respondent.

In the course of the hearing on May 12, 1972 (on page 18 of record) it was disclosed for the first time that the female respondent had been admitted to the United States for permanent residence at San Francisco, California on September 13, 1964. This fact was apparently as great a surprise to the Immigration authorities as it was to counsel for the respondent. The status of permanent residence in the United States once acquired is retained until lost by abandonment or deportation proceedings. If the female respondent had not lost her status as a permanent resident, her action in returning to the

United States as a visitor could have been remedied by granting her a waiver of the documents normally required for such return. An effort was made in the course of the hearing to explore the dates of all absences of this respondent from the United States since 1964, her purpose in leaving and all of the other factors which go to the question of relinquishment of her residence, but without noticeable success. Counsel for the respondent adopted a practical approach to this aspect of the case and agreed that he had no particular concern whether the female respondent were considered a person who had never relinquished her original lawful permanent residence in the United States or whether she was granted the privilege of permanent residence again under Section 245 of the Immigration and Nationality Act, as long as the final result was a grant of permanent residence in the United States.

As already indicated above, counsel for the respondent submitted applications in behalf of each of these respondents on or about March 3, 1972 to have them accorded a third preference under the quotas for their respective countries as persons who are of exceptional ability in the sciences or the arts and who by reason of that ability would substantially benefit the national economy, cultural interests or welfare of the United States. No final action was taken by the immigration authorities on such applications until May 2, 1972 when counsel for the respondent was notified of such approval when he appeared for argument before the Federal Court for the Southern District of New York in connection with his request for a temporary

restraining order against the immigration authorities from proceeding with the deportation hearings until a decision had been made on the application for a third preference. Copies of the notices containing such approval are contained in the record as Exhibits 8 and 9.

Although the reluctance of the respondents to the possible reaching of a different conclusion in their respective applications is understandable, their matrimonial unity can no more force a joint approval than it could compel a joint denial. The applications must be considered on their separate merits and counsel for the respondents so consented (page 20 of the record).

Directing myself to the application of Mrs. Lennon, it seems clear that the record contains no evidence indicating her ineligibility for adjustment. She has been examined by the United States Public Health Service and found to be medically admissible to the United States. A nonpreference quota number has been assigned for her use by the Visa Office of the Department of State, pursuant to the instructions contained in the current quota bulletins covering situations where the priority date under the third preference is such that visa numbers are not presently available under that preference.

Although this respondent does not appear to have regular employment in the United States, the problem of her support does not appear to be a serious one in view of the fact that the testimony of Mr. Lennon's business manager is to the effect that he is the owner of one quarter of a business enterprise which grosses in excess of fifty million dollars per year in the United States.

I find therefore that Mrs. Lennon has met the statutory requirements for adjustment of status in the United States and such relief will be granted as a matter of administrative discretion.

Turning now to a consideration of Mr. Lennon's application, we are confronted by Exhibit 10 which is a record of conviction on November 28, 1968 in the Marylebone Magistrates Court in London. The nature of the offense for which the respondent was found guilty is described as follows:

> "Having in his possession a dangerous drug to wit: Cannabis Resin without being duly authorized, at 34 Montague Square W. 1. on 18-10-68 Con to Regs. 3 Dangerous Drugs (2) Regs; Dangerous Drugs Act 1965."

The respondent has admitted that this record of conviction relates to him and it has also been admitted that the respondent pleaded guilty to this offense and was fined 150 pounds with 20 guineas as costs. The record of conviction also shows that he was charged with wilfully obstructing one Norman Pilcher, a constable of the Metropolitan Police Force who was exercising his powers under the Dangerous Drugs Act, but was found not guilty of this charge.

At the commencement to these proceedings in March 1972 counsel for the respondents requested an adjournment because action was contemplated in England directed to setting aside this conviction of the respondent on the ground that Constable Pilcher had acted improperly in connection with the respondent's arrest. Apparently some criminal proceedings are pending in England against Constable Pilcher in connection with his

activities relating to another defendant. See communication of December 1, 1972 and March 14, 1973 from respondents' attorney. However, almost a year has passed since these proceedings were commenced before me and there apparently has been no further progress towards setting aside the conviction described above, no any indication that the pending criminal proceedings are related to the conviction of this respondent, or will result in any modification of that conviction.

An alien who applies for adjustment of his status to that of a permanent resident of the United States under Section 245 of the Immigration and Nationality Act is required to establish that he is eligible to receive an immigrant visa and is admissible to the United States for residence. Section 212(a) of the Immigration and Nationality Act provides in part, as follows:

> "Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission to the United States:
> (23) - any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marijuana, ...

It is the contention of the Immigration and Naturalization Service that the conviction referred to above on November 28, 1968 for having in his possession Cannabis Resin without being duly authorized is a conviction of a violation of law or regulation relating to the illicit possession of marijuana which renders this respondent ineligible to

receive a visa and excludable from admission to the United States and accordingly ineligible for adjustment of his status to that of a permanent resident of the United States.

It may be noted in passing that this claim by the immigration authorities was not unknown to the respondent who had sought admission to the United States on several prior occasions after his conviction and before his appearance before me and in order to be admitted to the United States for a temporary visit asked for and received a waiver from the immigration authorities under Section 212(d)(3)(A) of the Immigration and Nationality Act. Exhibit 14 is the original of such a waiver dated August 11, 1971 which was granted the respondent in connection with his last entry into the United States. It also shows clearly the limited terms under which the respondent was admitted to the United States pursuant to this waiver, namely to edit film, to consult with business associates, and to attend a custody hearing in the Virgin Islands on September 16, 1971. The waiver stated further that the period of temporary stay was to be six weeks on condition that the activities and itinerary of the applicant should be limited to those set forth in the waiver and that no extension of stay or change in activities or deviation of itinerary should be authorized without prior approval of the District Director in Washington, D. C.

It should be noted further that although such a waiver is possible under Section 212(d)(3) of the Act in connection with a temporary admission as a nonimmigrant, no such provision exists for a waiver in the case of a person who is seeking admission to the United States as a permanent resident.

Although Congress has provided for a waiver of excludability for persons seeking admission to the United States for permanent residence who may be excludable under Section 212(a)(9), (10), or (12) of the Act, where their exclusion would result in hardship to a citizen or lawful resident spouse or child, it has not seen fit to include excludability under Section 212(a)(23) of the Act among those grounds eligible for such a waiver.

It may be noted further that this difference of attitude towards, on the one hand those convicted of ordinary crimes and on the other those convicted of crimes relating to drugs and narcotics is also reflected in Section 241(b) of the Act. That provision of law provides that those persons who might be deportable by reason of their conviction for crimes may be excused from such consequences if they have been granted a full and unconditional pardon for such crimes or if the court sentencing such alien for such crimes makes at the time of first imposing sentence a recommendation to the Attorney General that such alien not be deported. The Section states specifically however, that these two provisions relieving the alien from deportability despite his conviction of a crime shall not apply in the case of any alien who is charged with being deportable from the United States under ~~sub~~ Section 241(a)(11), the deportation section which corresponds to Section 212(a)(23) governing exclusion from the United States, for narcotics offenses.

Before proceeding to the principle question at issue, namely whether the male respondent's conviction in England brings him within the ambit

of Section 212(a)(23) of the Act, one preliminary contention must be disposed of. Counsel for the respondent (at page 55 of his brief) states that it has never been very clear that a foreign conviction was intended by Congress to be included under Section 212(a)(23) of the Act. This contention has no merit whatsoever. Section 212 of the Act sets forth the grounds on which aliens shall be excluded from admission into the United States. Obviously it contemplates aliens who are coming from some country outside of the United States. The convictions that such persons would have, would, in the vast majority of cases, have occurred outside the United States. It is only in the unusual situation where an alien who has previously been in the United States has been convicted in the United States and departed and thereafter applied for a visa that the ground of excludability would be based on a conviction in the United States. Moreover, the Congressional history relating to Section 212(a)(23) shows clearly that it was the intention of Congress in enacting the original 212(a)(23) and 241(a)(11) to encompass foreign convictions relating to narcotics within the scope of those sections.

In Senate report #1515, 81st Congress, Second Session, (1950) at page 410 the following recommendation of the sub committee on the judiciary is to be found:

> "the sub committee recommends that the immigration laws contain specific provision for the deportation of aliens who have been convicted of any law pertaining to narcotics. Such aliens should

be deportable whether the conviction occurred prior to or after entry into the United States. The deportable class will include those convicted under any law in this country pertaining to narcotics or under any such law of a foreign country."

The same page shows clearly that it was the intention of Congress to make deportable those who had been convicted merely of illegal possession of a narcotic drug, though it erroneously concluded that under the decided cases mere possession would result in deportability under the statute as originally drawn. The Congressional expectation was erroneous and necessitated the subsequent amendment of the statute to be described below.

The respondents' brief likewise states (page 55) that a thorough review of all the reported court decisions fails to disclose even one where a prior foreign conviction was used as a ground for exclusion under Section 212(a)(23). A more diligent search would have disclosed the decision in Matter of Cardos, 10 I&N Dec. 261, affirmed in Cardos v. Immigration and Naturalization Service, 324 F. 2d 179 (C. A. 2, 1963).

In that case, which bears a close resemblance to the instant proceeding, the alien there concerned had been convicted in 1956 in Canada of the crime of unlawfully possessing marijuana in violation of Section 4, paragraph 1 of the Opium and Narcotic Drug Act and had been sentenced to imprisonment for six months. He did not enter the United States till August 4, 1959.

The Board of Immigration Appeals set forth the legislative history of the amendment to Section 212(a)(23) and 241(a)(11) which took effect

on July 14, 1960 and reached the conclusion that the purpose of amending Section 212(a)(23) and Section 241(a)(11) was to make it certain that a conviction of an alien for violation of any law relating to illicit possession of marijuana should render him excludable or deportable. It may be noted that since this amendment took place on July 14, 1960, the alien in Matter of Cardos was not even excludable from the United States at the time of his entry in 1959. Nevertheless, the Board of Immigration Appeals and the Court of Appeals for the Second Circuit found him deportable in 1963 under the statute as amended in 1960.

The additional legislative history relating to the amendment of Section 212(a)(23) and 241(a)(11) of the Act in 1956 and again in 1960 to specifically include "possession" in addition to offenses relating to the "traffic" in narcotic drugs is set forth by the Board of Immigration Appeals in Matter of W-A-, 7 I & N Dec. 571, as well as in the briefs of the attorney for the respondents and the Trial Attorney for the government.

The conclusion is inescapable from that legislative history that Congress intended to and succeeded in making it a ground for exclusion and deportation that the alien was convicted of "possession" of marijuana or other enumerated drugs and that such "possession" did not have to be possession for purposes of sale or any purpose other than mere use to make the alien excludable or deportable. This is clear from the fact that the statute now reads specifically "illicit possession of or traffic in narcotic drugs or marijuana". The specific contrast by the statute of possession on the one hand and traffic on the other makes it clear that the possession which is penalized does not require any intent to engage in traffic or other activity.

The brief for the respondents contends at page 40 and thereafter that only those convictions for possession of marijuana which occur under circumstances which would enable the accused to traffic in the substance are included in Section 212(a)(23) of the Act. In reaching this conclusion counsel relies heavily on the decision of the Court in Varca v. Rosenberg, 237 F. Supp. 282 (S. D. Cal. 1964). In that case the government was seeking to deport an alien who had been convicted under a California statute of use or being under the influence of narcotics. As the Court pointed out, the narcotics in question were in the system of the alien.

The court stated as follows:

> "While Congress undoubtedly intended to close "every possible loophole where a person had been convicted of a crime relating to the possession of narcotics", the legislative history indicates that the Committee's aim was to eliminate traffic in narcotics as distinguished from use. . .
>
> Congress undoubtedly has aimed its attack upon possession which would give the possessor "such dominion and control as would have given him the power of disposal". . .
>
> Petitioner in the case at bar was convicted for use or being under the influence of narcotics. In other words, the narcotics were in his system. At this point the defendant was hardly in a position to traffic in the drug and can hardly be said to have possession which would give him such dominion and control as to include the power of disposition.
>
> Prior to amendment of 8 USCA 1251(a)(11), the statute referred only to possession "for the purpose of the manufacture, production, compounding, transportation, giving away, importation or exportation" of the narcotic.

> It is consonant with the aforementioned purpose of Congress to include a provision relating to possession alone to obviate the burden of proving possession for a specific purpose. Any discernable narcotic in the possession of anyone is potentially in the narcotic traffic. The object was to accomplish by the best means possible the elimination of the illicit traffic" (emphasis supplied).

In substance therefore, what the court was saying was that Congress was trying to reach the traffic in drugs, that it facilitated such object by making mere possession a deportable offense, but that possession implies such a dominion and control as would give the possessor of the power of disposal. Consequently it was reluctant to say that an alien who merely had the narcotics within his bloodstream where it might have been injected by some other person, had such dominion and control as would give him power of disposal. It is perfectly clear from the decision however that a mere possession without intent to traffic in drugs would be sufficient to bring the alien within the statute since he would have such dominion and control as would give him the power of disposal.

What then did Mr. Lennon admit by his plea of guilty? The provisions of the Dangerous Drug Act of 1965 and the regulations which were promulgated under the 1964 Act and continued in effect under the 1965 Act are included in the record herein and are set forth also in the brief of the respondent at pages 5 and 6. Section 3 of the regulations provides that a person shall not be in possession of a drug which is prohibited by the Act unless he is authorized or licensed to have such possession.

Section 20 of the regulations provides as follows:

> "For the purposes of these regulations a person shall be deemed to be in possession of a drug if it is in his actual custody or is held by some other person subject to his control or for him and on his behalf".

By pleading guilty to the charge set forth in Exhibit 10, the respondent conceded that he was "in possession" of a stated amount of cannabis resin, that such possession was not legally authorized, and what is more important that the drug was either in his actual custody or was held by some other person subject to his control or for him and on his behalf.

These are precisely the elements of dominion and control which the court in Varga (supra) emphasized.

I find therefore that even the court in Varga would find that a person who was convicted of possession under the Dangerous Drugs Act of 1965 would fall within the scope of Section 241(a)(11) of the Act by reason of the necessary finding of dominion and control.

As a kind of corollary to this argument the counsel for the respondent advances another thesis which is to the effect that under the cases decided in England relating to the criminality of the possession of narcotics, it was the established law that the guilt of the defendant could be established without reference to the proof of any particular mental state or so-called "Mens Rea".

I have carefully examined all of the English cases referred to by counsel for the respondent in his brief from pages 26 to 39 and the cited Law Review Articles as well. In addition, I have referred to the somewhat more recent article in The New Law Journal, September 28, 1972, page 844, entitled "Dangerous Drugs - Possession, by O. A. S. Owen. and the more recent cases of Regina v. Irving, (1970) Crim. L. R. 642, Regina v. Marriott (1971) Crim. L. R. 172, and Regina v. Russell, (1972) Crim. L. R. 50.

The one element which all of the cases and authorities agree upon is the statement of Lord Parker C. J. in Lockyer v. Gibb (1967) 2 Q. B. 243 as follows:

> "in my judgement it is quite clear that a person cannot be in possession of some article which he or she does not realize is, for example, in her handbag, in her room, or in some other place over which she has control".

In other words, completely innocent and unknowing custody or potential control over a drug is not possession within the meaning of the act and regulations.

The court in Regina v. Marriott characterized the state of the law as of 1970 as follows:

> "not all members of the House of Lords expressed themselves in precisely the same way, but, for the purposes of this present appeal, the result of Reg v. Warner may, broadly speaking and we hope with accuracy, be stated in this way: If a man is in possession, for example, of a box and he knows there are articles of some sort

> inside it and it turns out that the contents comprise, for example, cannabis resin, it does not lie in his mouth to say: "I did not know the contents included resin". On the contrary, on those facts he must be regarded as in possession of it and, if not lawfully entitled, would, therefore, be guilty of an offense such as that charged in the present case.

By pleading guilty, this respondent must have admitted therefore those elements which the court would have considered necessary to establish to sustain a conviction. The first of course would be that the material which the police discovered was, in fact, cannabis resin, a prohibited drug. The second would be the admission that he was, in fact, in "possession" of such drug by reason of the fact that it was either in his actual custody or held by some other person subject to his control or for him and on his behalf. Finally the plea of guilty would admit that he was aware that there was some extra substance in the Binocular case which was in his home but not necessarily that he knew it was cannabis resin.

Even if the holding of the court in Varga v. Rosenberg (supra) is considered to be definitive and binding on what constitutes possession for purposes of Section 212(a)(23) of the Act, it seems clear that this respondent by his plea of guilty admitted such dominion and control over the drug as would have given him the power of disposal.

The lack of a requirement that the state establish that the defendant, in addition to having the drug under his dominion and control, also knew that it was the particular drug whose idenity the government established, is not as foreign and outrageous to the system of jurisprudence

of the United States as counsel for the respondent would have me believe.

It is true that the large majority of cases involving prosecutions for "possession" under the Uniform Narcotic Drug Act require a knowledge by the defendant of the existence of the narcotics where found, in addition to the elements of immediate and exclusive control or at least joint control or constructive possession. (91 A.L.R.(2) 810). However, it has been held in a minority of jurisdictions that such knowledge IS not an element.

For example in State v. Boggs, 57 Wn. (2d) 404 (1961) the court in sustaining the conviction of the defendant for unlawful possession of a narcotic drug stated as follows:

> "In essence it is the appellant's contention that awareness by the accused of the narcotic character of the article possessed is an essential element to this offense. The appellant bases this contention upon the assumption that an intent to possess a narcotic drug is required to be proved under a charge of unlawful possession of a narcotic drug. This assumption is erroneous. The Legislature by its enactment of controls against the evil of the narcotic traffic through the adoption of the Uniform Narcotic Drug Act has made mere possession of a narcotic drug a crime, unless the possession is authorized in the Act. RCW 69.33.230 provides:
>
> > "it shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter".
>
> In construing this statute in State v. Hinker, 50 Wn.(2d)809, 314 P. (2d) 645 (1957), we stated:
>
> > "whether intent or guilty knowledge is to be made an essential element of this crime is basically a matter to be determined by the Legislature.

> Had the Legislature intended to retain guilty knowledge or intent as an element of the crime of possession, it would have spelled it out as it did in the previous statute. The omission of the word with intent evidences a desire to make mere possession or control a crime."
>
> Our holding in the Minker case, that guilty knowledge or intent is not an element of the crime of possession of narcotics under RCW 69.33.230, is controlling in the disposition of appellant's first contention".

See also the discussion by the court in State v. Callahan, 77 Wn. (2d) 27 (1969) for a discussion as to what constitutes"possession" under the laws of the state of Washington. As the court in that decision pointed out, possession of property may be either actual or constructive. Actual possession means that the goods are in the personal custody of the person charged with possession; whereas constructive possession means that the goods are not in actual physical possession, but that the person charged with possession has dominion and control over the goods. As the court there points out, in the previous case of State v. White, it had been held that where the evidence showed that the defendant had been living on the premises for a month, sharing the rent, bringing furniture into the house, inviting others to spend the night, the defendant had sufficient dominion and control over the premises to find him guilty of constructive possession of marijuana found in the living room of the house, although the defendant denied any knowledge of its presence.

See also the article in 58 Virginia Law Review 751 (May 1972), "Constructive Possession in Narcotics Cases. To Have and Have Not".

The note in 91 ALR (2) 810, states also that the fact that possession of narcotics is only for personal use, does not prevent it from being "possession" in violation of paragraph 2 of the Uniform Narcotics Drug Act, this contention having been uniformly rejected by the courts. See for example in State v. Reed (1961) 34 N.J. 554, 170 A (2d) 419, where the court said that if the legislature had intended to limit the illegality to possession with intent to sell, administer, compound, and etc., it could have so provided. By failing to so state it made "possession" only the ground of illegality. The court stated the person who possesses, has the power to dispense it to another.

The constitutionality of the lack of a requirement of scienter in criminal cases was discussed by the Supreme Court in U. S. v. Balint, 258 US 50 (1922). That case concerned a conviction for violation of Section 2 of the Narcotics Act. 38 Stat. 786. selling narcotics without a written form issued by the Commissioner of Internal Revenue. The court said as follows:

> "While the general rule of common law was that the scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crime even where the statutory definition is not in terms included, there has been a modification of this view in respect to prosecution under statutes, the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court.
>
> It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so

> is an absence of due process of law. But that objection is considered and overruled in Shevlin - Carpenter Company v. Minnesota, 218 US 57, 69, 70, in which it was held that in the prohibition or punishment of particular acts, the State may, in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense, good faith or ignorance".

The Court of Appeals for the Third Circuit gave consideration to the general problem of the lack of a requirement of a particular state of mind or intent in a criminal prosecution in U.S. v. Greenbaum which involved a prosecution for unlawfully introducing into interstate commerce cans of adulterated eggs. The court said after quoting U.S. v. Balint (supra) as follows:

> "while the absence of any requirement of mens rea is usually met with in statutes punishing minor or police offenses (for which fines, at least in the first instance, are ordinarily the penalties), we think that interpretation of legislative intent as dispensing with the knowledge and wilfulness as elements of specified crimes is not to be restricted to offenses differentiable upon their relative lack of turpitude. Where the offenses prohibited and made punishable are capable of inflicting widespread injury, and where the requirements of proof of the offenders guilty knowledge and wrongful intent would render enforcement of the prohibition difficult if not impossible (i.e. in effect tends to nullify the statute), the legislative intent to dispense with mens rea as an element of the offense has justifiable basis. Notable among such offenses are dealings in adulterated foods and drugs."

See also the annotation at 152 ALR 755 for a general discussion of prosecutions for violation of food laws where ignorance, mistake of fact, lack of criminal intent or good faith may be present.

I conclude therefore that the requirements for a conviction in 1968 under the Dangerous Drugs Act of 1965, including as they do as a bare minimum the proof of or admission of possession, dominion and control, although perhaps different from the majority of jurisdictions in the United States, is actually followed in some states of the United States dealing with possession of drugs. The absence of a requirement for scienter or mens rea is followed by the majority of courts of the United States in other types of convictions leading to a possible sentence to penal servitude, and is not so repugnant to the principles of jurisprudence of this country that Mr. Lennon's conviction should not be recognized as a conviction relating to the possession of marijuana.

It should be noted in this connection that the phrase "conviction of violation of a law relating to the possession of marijuana" is broader than "a conviction for the possession of marijuana". For example, in Matter of P - C -, 7 I&N Dec. 100, the alien involved had been convicted under Section 11502 of the Health and Safety Code of the State of California for having agreed to sell heroin but having in fact furnished another substance in lieu of the narcotic. It was argued in the course of that proceeding that the statute, in fact, deals with fraud and false pretenses and is not a statute relating to a narcotic drug since it was entirely clear that no narcotic drug had in fact changed hands, nor was such exchange even contemplated by the alien. The Board of

Immigration Appeals hold however that a conviction under the named section was, in fact, a conviction "relating to the sale of narcotics" and that the phrase "relating to" is a term of broad coverage.

A situation somewhat analogous to the relationship between the respondent's conviction and his immigration excludability exists in the body of cases involving prosecutions under 18 USC 1407. That provision of law requires a registration upon the crossing of a border of the United States by a narcotics addict, user or violator, with a possible $1000 fine or up to three years imprisonment as a criminal sanction. The annotation in 4 ALR (Fed) 616 shows that wilfulness is not an ingredient of the statute but that it is mala prohibita.

For example, in Adams v. US. C.A. 9, 299 F (2) 327 (1962), the individual concerned had been convicted in California for the possession of marijuana and committed to the Youth Authority of that State. He was charged with having crossed the border without reporting his conviction and the court excluded evidence on the effect of the expungement of his record by an honorable discharge from the Youth Authority. The court pointed out that Section 1407 should not depend on all of the peculiarities of the laws of the various states. It was stating in effect that a conviction for the purposes of Section 1407 is a conviction even though it might have been expunged by the operation of the laws of California. In Smith v. U.S. (1963) C.A. 9, 321 Fed. (2) 731, Cert. Den. 375 U.S. 988, the subject had been convicted in Arkansas for a violation of narcotic laws and sentence had been suspended on condition that he leave the State.

The court sustained his conviction under Section 1407 for failing to report this conviction, rejecting the contention that the court imposed condition of leaving the State was an unconstitutional condition and therefore no valid conviction under the Arkansas laws. The court assumed for the purposes of the case that an illegal sentence had been imposed but held that since the defendant would have been entitled to request that he be resentenced, the illegal sentence did not vitiate the conviction under 1407.

In Hasrat v. U.S. C.A. 9 321 F (2) 582, (1963), the court was concerned with a conviction under the California Health and Safety Code for agreeing to sell narcotics and selling something else, as was the concern of the Board of Immigration Appeals in Matter of P - C -, 7 I&N 100 (supra). It was held that this was a conviction for a narcotic or marijuana law violation which required registration upon crossing the border and failure to do so was a violation of Section 1407.

There is therefore a considerable volume of law relating to prosecutions for violation of 18 USC 1407 which are based on the existence of an underlying conviction of the defendant for a narcotics or marijuana violation where the courts have refused to consider relevant the mental state of the defendant, the legality of the original conviction or even its expungement under the laws of that state.

The Board of Immigration Appeals in Matter of Romandia-Herreros, 11 I&N Dec. 772 gave consideration to an alien who had engaged in activity relating to the possession of codeine and morphine.

However, after indictment in California and while out on bail, he left for Mexico and the California proceedings were not completed. However, under the laws of Mexico he was prosecuted in Mexico for a crime committed in a foreign territory for a violation of law which would also have been a crime in Mexico, namely the possession of morphine and codeine. The Board of Immigration Appeals held that he was deportable under Section 241(a)(11) of the Immigration and Nationality Act despite his conviction in a foreign state whose only claim to jurisdiction over the crime was the fact that the defendant was a national of that country, all of the alleged criminal acts having taken place in the United States. A somewhat similar decision was reached in Matter of Adamo, 10 I&N Dec. 593, which did not relate to a narcotics conviction but a conviction for embezzlement before an Italian Court for acts which had been committed entirely in the United States. The Board of Immigration Appeals stated that the record of a foreign conviction showing that it was a penal conviction is conclusive evidence of the nature of a conviction. It stated that it could not go behind the record to inquire into the legal status of the tribunal other than in those rare exceptions relating to convictions in absentia or convictions for political offenses. The difficulty the Board of Immigration Appeals refers to is amply exhibited by the instant case when we seek to explore the delicate nuances of the state of mind required for convictions under the Dangerous Drugs Act of 1965.

It will be noted that Section 212(a)(23) refers to the excludability of a person convicted of a crime relating to the possession of marijuana

whereas the respondent herein stands convicted of possession of cannabis resin. It is urged at some length, that when Congress used the term "marijuana" in the section of the consideration, it did not intend to include "cannabis resin".

The respondent offered in his behalf the testimony of Dr. Lester Grinspoon, Associate Clinical Professor of Psychiatry at Harvard Medical School whose medical qualifications qualify him fully as an expert in this field. A book written by Dr. Grinspoon entitled "Marijuana Reconsidered" (Harvard University Press, 1971) was made part of this record as Exhibit 13. Reference to Exhibit 13, beginning at page 30 thereof, indicates that since 1753 the name Cannabis Sativa has been given to the plant known as Indian Hemp. Cannabis Sativa is one of a relatively small number of so-called hallucinagenic plants. It is an easily grown plant, widely cultivated or growing naturally in many parts of the world. It is a source not only of hallucinagenic material, but also of hemp fibre and a seed oil. Although the plant may differ widely in its appearance depending upon the climate under which it is grown, it is generally agreed that all specimens are of a single species. The plant and its products are referred to by a wide number of different terms, depending upon where it is grown and where it is used. The male and female plant differ markedly in appearance, though both bear flowers. The chemical compounds responsible for the intoxicating effect of cannabis are commonly found in a sticky, golden resin which, during periods of the growing season's greatest heat, is exuded from the female flowers and is found also in the adjacent leaves

and stalks. Although it is generally held that the plants active agents are found solely in the resin produced by the female flower parts there is insufficient evidence to support this hypothesis. It is possible that the other parts of the female and male plants may contain active substances. The resin and resin bearing parts of hemp are prepared for use in a variety of ways. Three grades of the drug are prepared in India and serve as a kind of standard against which preparations produced in other parts of the world are compared for potency. They are bhang, ganja, and charras. The least potent and cheapest preparation, bhang, is derived from hemp, grown in the plains areas and may consist simply of hemp leaves picked from door yard plants, dried, and then crushed into a coarse powder. The resulting drug is of inferior quality and may be smoked or made into a decoction. Ganja, the second strongest preparation, is prepared from the flowering tops of cultivated female plants. The dried tops, with their exuded resin are generally smoked sometimes mixed with tobacco leaves. Ganja is estimated at being two or three times as strong as bhang and is more desirable and costlier.

Pure resin of the pistillate flowers is called charras, and is the most potent of the intoxicants. The resin which is collected from the plants may be treated somewhat before it is sold and consumed but the treatments are largely mechanical in nature. The resin may be sifted to eliminate dirt and impurities, shaped, dried, and sliced into sheets. Charras or cannabis resin is called hashish in Egypt, Asia Minor and Syria.

The essence of Dr. Grinspoon's testimony is contained on page 41 of his book where he states that most westerners and certainly most Americans who use cannabis take it in a form of cigarettes which are roughly comparable to Indian bhang in content, mode of preparation and potency. As such, such cigarettes are about 1/5 to 1/8 the potency of Indian charras and in general the hand rolled cigarette predominates in the United States.

What Dr. Grinspoon is urging in his testimony is that the common usage in the United States limits the term "marijuana" to cigarettes composed of the dried leaves and perhaps seeds and miscellaneous parts of the marijuana plant as distinct from cannabis resin which is an exudation of the female plant during its flowering period.

The legislative history of Section 212(a)(23) and 241(a)(11) is not as explicit as one might wish in defining the term marijuana. The term first appeared in the Immigration and Nationality Act of 1952 but only in reference to activities relating to traffic, sale or possession for such related purposes. The statute contains no definition of marijuana. The Narcotics Control Act of 1956 was aimed at various aspects of the narcotics problem. The immigration sections were only one part of the Congressional effort. The immigration modification was aimed directly at specifically including mere possession of narcotics or a conspiracy to violate the narcotic laws as grounds for excludability or deportability. It was the Congressional belief that a conviction for the possession of

marijuana would constitute a conviction for the possession of narcotics and consequently would call the section into operation.

In U.S. Code Congressional and Administrative News, 84th Cong. 2nd Session, (1956) Volume 2, page 3294, footnote #1, is found the following quotation "general references to narcotics in this report includes within the term marijuana which is similarly treated with respect to penalties, etc."

It is clear therefore that in drafting the Narcotics Control Act of 1956, Congress believed that when it used the term narcotics, it was including the term marijuana. Accordingly, there was no need for Congress to define marijuana in a section where it had used the term "narcotics". Congress' misconception as to the inclusion of "marijuana" within the scope of "narcotics" led to the subsequent court decisions and further amendment of the statute in 1960 to specifically include marijuana by name. In connection with the 1960 amendment here again was no definition. However, in the "Narcotic Control Act of 1956" which included a number of different sections relating to different provisions of law, all of which were enacted as a unit, entitled "The Narcotic Control Act of 1956", there occurs title 21, Section 176(a), relating to the smuggling of marijuana, which specifically states "as used in this section, the term "marijuana" has the meaning given to such term by Section 4761 of the Internal Revenue Code of 1964." Section 4761 defines the term "marijuana" as including all parts of the plant including the resin extracted from any part of such plant. It is true that Section 176(a) states "as used in this section," in

defining the term marijuana. It does not seem unreasonable to me that if Congress included the 1956 version of Section 212(a)(23) in a considerably broader Act and in one portion of that Act defined marijuana, to conclude that the same definition of marijuana would apply to all uses of the term within the various discreet sections of the larger Act, whether specifically added to such sections or not. It certainly would be a bizarre interpretation of Congressional intent to believe that Congress would define the term for one section within the larger Act and expect a different interpretation for the same term to be applied in Section 212(a)(23) without making a specific reference to the difference in meaning. If we consider the term to have been adequately defined in 1956 by the reference to the Internal Revenue Code, such definition would continue through the 1960 amendment which merely added marijuana disjunctively to the possession section at its beginning.

If we assume however, that the Congressional efforts to define the term outlined above were inadequate to reach the term as used in Section 212(a)(23), the question which has to be answered is what Congress would have intended to cover by the use of the term marijuana, had the matter received its specific attention. The record is clear in the 1956 and 1960 amendments that Congress was attempting to make excludable and deportable aliens convicted of mere possession of narcotics in general and marijuana in particular. As indicated above, cannabis resin is the direct natural product of the cannabis sativa plant. It is a resin naturally exuded by the plant. It contains in a concentrated form the hallucinagenic agent

which is the very basis for the attitude towards marijuana. To imply that the Congress. intent as it was on reaching for exclusion and deportation persons convicted of possession of marijuana would have rejected a person convicted of the possession of the concentrated natural products of the marijuana plant is to corrupt statutory interpretation into a futile exercise of semantics.

Ironically enough there have been several recent decisions to which neither the respondent nor the government have referred me, in which the present contentions of the government and respondent have been reversed. In these cases, it is the government which urged that marijuana and hashish were different and the criminal defendant therein concerned that they were identical. These were cases which arose subsequent to the decision by the Supreme Court in Leary v. U.S. 395 US 6, 89 Supreme Court 1532 (1969). In that case the Supreme Court held unconstitutional the presumption in Title 21, Section 176(a) of knowledge of illegal importation of marijuana arising from possession, on the ground that there was widespread cultivation of the plant in the United States and that there was no necessary or reasonable connection between coming into possession of the dried leaves and a presumption of knowledge that the same was illegally imported from another country. In U.S. v. Piercefield, 437 F (2d) 1108 (1971) the defendant argued that with respect to the irrationality of the presumption of knowledge of importation from the sole fact of possession, there could be no distinction between hashish and marijuana. He was accused of the unlawful importation of hashish and since there was no direct evidence of the unlawful

importation. the court must have relied on the presumption in Section 176(a). The Court of Appeals held however that the Trial Court had not. in fact, utilized the presumption and that there was sufficient evidence to support a finding of unlawful importation of hashish. It referred to the testimony of a chemist for the United States Customs Laboratory who stated that hashish had never been manufactured in the United States and that it would be necessary to have 625 pounds of marijuana with the highest resin quality to make one pound of hashish from marijuana grown within the United States.

In U.S. v. Conclis, 426 F. 2d 137 (1970) (C.A. 9), the court was confronted with the identical situation. In this case also, the government although arguing that hashish was marijuana within the meaning of 21 USC 176(a), the government contended that hashish was not within the scope of Leary v. U.S., and that by reason of climatic considerations and the difficulty of producing domestic hashish, users would be likely to know that the hashish was illegally imported. The court concluded that the record before it was inadequate for a proper conclusion and remanded the case for a finding by the trial court as to whether it had, in fact, relied on Section 176(a) presumption, and if so to grant a new trial and explore the nature of hashish. On remand the trial court affirmed that it had not relied on the presumption but had relied on the evidence before it and concluded on a factual basis that the defendant had actual and not merely presumed knowledge of the illegal importation. No case has been found holding that hashish is different from marijuana in the context of a prosecution under a statute specifically mentioning only marijuana.

A carefully delineated distinction between marijuana and hashish appears to be a more recent product of increased legislative sophistication. In paragraph 54-5.4.101 of the Virginia Code annotated, effective April 5, 1970 the maximum punishment for the possession of marijuana is $1000 fine and imprisonment not exceeding 12 months. However, for drugs other than marijuana the punishment can be considerably more, even for a first offender. The statute specifically defines marijuana as meaning any part of the plant cannabis sativa but not including resin extracted from any part of such plant and defines hashish as distinct from marijuana as including the resin extracted from any part of the plant cannabis sativa.

After a careful consideration of all the relevant material, I reach the conclusion that whether considered from the point of view of expressed Congressional intent as evidenced by the specific definition referred to by Congress in amending Section 212(a)(23) in 1956, or by inferring that intent of Congress with regard to the definition of marijuana which most effectively would give expression to the general intent of Congress in enacting that section, I reach the conclusion that a conviction for the possession of cannabis resin is a conviction for a crime relating to the possession of marijuana and consequently within the scope of Section 212(a)(23) of the Act.

The next contention of counsel for the respondent is one which is basically set forth in his letter of August 14, 1972 to the Wall Street Journal entitled "The Cultural Lag in Immigration Laws".

Since the letter presents the legal situation so accurately, it may be quoted verbatim, where relevant.

> "If John Lennon's desirability as an artist is acknowledged by the Immigration Service itself, what at the same time makes him so undesirable an alien, allegedly unable to become a permanent resident, is a little known provision of the immigration law barring from admission any alien convicted of any offense, no matter how trivial, relating to the possession of marijuana. A similar provision exists requiring deportation of aliens who are already here.
>
> Court decisions have held that this absolute bar applies regardless of whether any punishment was imposed, whether the offense is technically considered a crime under local law, irrespective of the amount of marijuana possessed or other circumstances of the case, or even whether the offense was actually the subject of an executive pardon. Moreover, no extenuating circumstances, such as hardship to American dependants, may be considered. . .
>
> The Immigration and Nationality Act provision which absolutely bars from admission and mandates the deportation of persons convicted of a violation of any law or regulation relating to the illicit possession of marijuana can no longer be justified in its present form. . .. The trends of our modern scientists who treat marijuana as a less serious social and medical danger than tobacco and liquor, and the reduction in the seriousness of marijuana possession convictions in many jurisdictions demonstrate a need for a change in the immigration laws harsh attitude towards marijuana."

The answer to this plea for Congressional action is contained within the letter as well. It states:

> "In the United States the authority to formulate immigration policy rests with the Congress and is derived from the constitutional power to regulate commerce with foreign states."

The government of the United States is a government of separated powers. The function of the judicial branch of government and such judicial functions of the executive as I exercise is one of interpretation and adjudication, not legislation.

As the Supreme Court of the United States said in Sinclair Refining Company v. Atkinson, 370 U.S. 195 (1962):

> "The question of what change, if any, should be made in the existing law is one of legislative policy properly within the exclusive domain of Congress - it is a question for lawmakers, not law interpreters. Our task is the more limited one of interpreting the law as it now stands. In dealing with problems of interpretation and application of federal statutes, we have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers. Where Congressional intent is discernable and here it seems crystal clear, we must give effect to that intent."

See also such cases as Mugler v. Kansas, 123 US 623 (1887) which involved a conviction for selling of beer in violation of law where Justice Harlan stated as follows:

> "There is no justification for holding that the state, under the guise merely of police regulations, is here aiming to deprive a citizen of his constitutional rights. If therefore, a state deems the absolute prohibition of the manufacture and sale within her limits, of intoxicating liquors for other than medical, scientific and manufacturing purposes, to be necessary to the peace and security of society the courts cannot, without usurping legislative functions override the will of the people as thus expressed by their chosen representative. They have nothing to do with the mere policy of legislation."

On the general question as related to the line of cases connected with prohibition and the general history of marijuana legislation, see the comprehensive article "The Forbidden Fruit and The Tree of Knowledge; an Inquiry Into The Legal History of American Marijuana Prohibition". Richard J. Bonnie and Charles H. Whitebread, 56 Virginia Law Review, pages 971 to 1203, October 1970.

One unusual aspect of these proceedings was the result of the activities of an organization known as the National Committee for John and Yoko. the committee organized for the purpose of soliciting public support for these respondents generally from persons of stature in various fields of artistic endeavor, but including also well known people in political and other fields. The testimony of several of such people was taken in the course of these proceedings (record page 44 to 62)

In addition a collection of over 100 letters solicited by the national committee for John and Yoko, were submitted as a single exhibit 15, all endorsing the respondents and recommending that they be permitted to remain permanently in the United States.

The position taken by the great majority of these correspondents is that the respondents are outstanding artists in their field. that they are of great value to the artistic life of the United States, and that the only reason permanent residence is being denied these respondents is because of their well-known opposition to war and violence and the participation by the United States in the war in Vietnam. The writers of the letters run the gamut from Baron Harlech of England and Mayor Lindsay of

the City of New York through every field of artistic endeavor from poet to professor. from sculptor to musician and museum director, nearly all people of outstanding artistic ability.

Although counsel for the respondent has scrupulously briefed every other aspect of this case, he has not drawn my attention to any case which would make this evidence relevant. Obviously the opinion of the witnesses and letter writers is not needed to establish the artistic qualifications of these respondents. The Immigration and Naturalization Service itself recognizes them as persons of exceptional ability in the arts who will be of substantial benefit to the national economy. cultural interests or welfare of the United States. The position of the letter writers and presumably by inference the position of the respondents appears to be that if a sufficient number of gifted artistic persons hold the respondents in high esteem. the provisions of the Immigration and Nationality Act may safely be disregarded in view of the overall benefits to the cultural life of the country as a whole.

The adjudication by artistic acclaim has of course certain serious difficulties. Is the judicial process to be reduced to a type of popularity contest? If so. would the respondents be willing to abide by the results of the statistical count? The Trial Attorney has indicated that he has received numerous letters from individuals who protest the presence of the respondents in the United States. How many more negative votes would be produced if a show of opinion was solicited generally rather than in the limited fashion engaged in by the national

committee for John and Yoko. Should the votes of creative artists count for more than the votes of automobile workers and farmers? What about the unpopular alien, the spy, the murderer, the captain of organized crime; are they to be deprived of due process of law because they are engulfed in the tide of hostile public opinion?

Whatever value such expression of public opinion might have in an area where Congress had entrusted the exercise of discretion to the judge, it is an empty academic exercise to pursue the matter further where we are concerned with the strict legality of an alien's excludability from the United States under a specific section of law. I respect the opinions of the artistic world for what they are, but find them not relevant in this particular context.

In the course of the hearings before me and in the initial brief filed by the respondent in this matter, some emphasis was placed on the then pending case of Mandel v. Attorney General, 325 F. supp. 620. It had been urged in that case that an alien who had been found ineligible for admission under Section 212(a)(28) of the Immigration and Nationality Act, as a person who advocated the economic international and governmental doctrines of world communism, has no personal right of entry but his exclusion from the United States would result in a deprivation of First Amendment rights to citizens of the United States to have him enter and to hear him.

However, on appeal to the Supreme Court of the United States it was held in Kleindienst, Attorney General v. Mandel, 408 U.S. 753, 92 S. Ct. 2576 (1972), that the power to exclude aliens is inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers - a power to be exercised exclusively by the political branches of the government. It pointed out that the Supreme Court, without exception, has sustained Congress' plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden. The court pointed out that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens. The alien in that case did not, in fact, question the right of Congress to exclude. What was urged was that where a provision for waiver existed for a temporary admission (i.e. such a waiver as was granted to Mr. Lennon for his temporary admission) the refusal to grant the waiver must be limited by the First Amendment. The Supreme Court felt that the Attorney General had given Mandel a sufficient reason for refusing him a waiver and that it would refuse to interfere with the Attorney General's exercise of the plenary power which Congress had delegated to him by Section 212(a)(29) and 212(d)(3). Obviously the position of the government is completely unassailable where the statute makes no provision whatsoever for a waiver in the case of aliens excludable under Section 212(a)(23) of the Act.

One last point merits discussion. The respondents are confronted by a legitimate legal and emotional dilemma rising out of their fight for

custody of Mrs. Lennon's 9-year-old daughter by her former marriage. The record indicates that the last legal proceeding relating to this custody was an opinion by the United States Court of Appeals for the Third Circuit. (Anthony P. Cox v. Yoko Ono Cox, decided March 30, 1972 Exhibit 15(a)) in which the court affirmed the decision of the District Court of the Virgin Islands modifying the divorce decree between the parties and awarding the care, custody and control to Mrs. Lennon subject to the right of reasonable visitation by the father. There is also a court order in effect issued by the Court of Domestic Relations of Paris County, Texas on March 7, 1972 granting Mrs. Lennon the custody of the child, provided that such custody may be exercised at any place within the territorial limits of the United States of America. Obviously, in order to enjoy such custody, Mrs. Lennon is required to remain in the United States, a requirement which is now made possible of solution by the grant of permanent residence to Mrs. Lennon. On the other hand it can hardly be an entirely satisfactory solution for her if Mr. Lennon is required to depart from the United States. The situation is further compounded by the fact that the respondents have been unable to locate the child and thus although they are legally entitled to her custody the reduction of that theoretical right to practical custody has not been achieved. Thus the "Law" which is enforcing the departure of Mr. Lennon from the United States has been unable to enforce its own edict with regards to the custody of Mrs. Lennon's child.

However, as of May 1972 the situation appeared to be at an indefinite impasse. Mrs Lennon had not seen the child for over two years she

claimed that she was unable to locate the child and there is no indication as of now that any progress has been made in that direction. There would appear to be some question as to whether the child, in fact, wants to return to Mrs Lennon. She appears to have called her mother in 1971 and complained that she was being harrassed by detectives. As a result the detectives were replaced by people who were personal friends of the Lennons apparently to continue surveillance. (Page 98 of record). It would appear that if the child is able to telephone the respondents. and the detectives and their replacements are able to be close enough to the child so that she feels harrassed, her whereabouts are not entirely unknown. In any event although the human equities of the situation are apparent, they do not in any way alter the excludability of Mr. Lennon from the United States and his consequent ineligibility for permanent residence. It lies within the power of the enforcement authorities of the Immigration and Naturalization Service to defer enforcing Mr. Lennon's departure from the United States if it could be demonstrated that such postponement is justified by the circumstances. This would however be merely in the nature of a postponement and would not in any way grant him the right of permanent residence in the United States.

It should be noted in this context that the government has not acted without a certain degree of compassion in this matter. If the government had seen fit to lodge an additional charge of deportability based on the conviction of Mr Lennon in England, a purely clerical detail the same reasoning which has sustained his excludability would of necessity result

in his deportability from the United States and under the provisions of Section 244(e) of the Act would make his actual enforced deportation mandatory rather than permitting him to request voluntary departure from the United States at his own expense.

Since Mr. Lennon has failed to establish his legal eligibility for admission into the United States and an immigrant visa, the application for adjustment of status under Section 245 of the Immigration and Nationality Act will be denied.

Mr Lennon requested the privilege of voluntary departure from the United States in lieu of deportation in the event that his application for permanent residence was denied (page 83). He is statutorily eligible for such relief. He has declined to designate any country to which he would prefer to be sent in the event deportation becomes necessary. His deportation will therefore be directed to England the country of his citizenship.

No claim of persecution has been made as to England in the event deportation to that country becomes necessary. This is contained in stipulation between counsel marked Exhibit 22.

ORDER: IT IS ORDERED that the application of Yoko Ono Lennon for adjustment of status under Section 245 of the Immigration and Nationality Act to that of a permanent resident of the United States be. and the same hereby is, granted.

IT IS FURTHER ORDERED that the application of John Winston Ono Lennon for adjustment of status under Section 245 of the Immigration and Nationality Act be, and the same hereby is, denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation the respondent, John Winston Ono Lennon, be granted voluntary departure without expense to the government on or before sixty days from the date this decision becomes final or any extension beyond such date as may be granted by the District Director and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent, John Winston Ono Lennon, fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: the respondent shall be deported from the United States to England on the second charge contained in his Order to Show Cause, to wit: Section 241(a)(2) of the Immigration and Nationality Act.

IRA FIELDSTEEL
Immigration Judge

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

RECEIVED
For Information
APR 2 - 1973
Immigration and Naturalization Service
New York, N.Y.

In the Matter of:

John Winston Ono LENNON

File No. A17 595 321

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated March 23, 1973, in the above entitled case.

2. I am (am) ____ (am not) filing a written brief or a written statement with the above Service office within the time allowed for such filing.

3. I do (do) ____ (do not) desire oral argument before the Board of Immigration Appeals in Washington, D.C.

4. Briefly, state reasons for this appeal.

(See Rider Attached)

25.00 PC

NY4 9 3 8 AP .21

No brief received within 30 days allowed for brief.

J. Feinstein
I.J.

March 30, 1973
Date

Leon Wildes
Signature of Appellant (or attorney or representative)

LEON WILDES, ESQ.
(Print or type name)

515 Madison Avenue, New York, NY
Address (Number, Street, City, State, Zip Code)

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Form I-290A
(Rev. 4-1-70)

INSTRUCTIONS

1. **Fees.** This notice of appeal must be accompanied by a fee of $25. (Only a single fee need be paid if two or more persons are covered by a single decision.) Attach money order or check, payable to the "Immigration and Naturalization Service, Department of Justice." Do NOT send cash. If this form is filed in Guam, make remittance payable to the "Treasurer, Guam;" if filed in the Virgin Islands, make remittance payable to "Commissioner of Finance of the Virgin Islands." The fee is required for filing the appeal and is not returnable regardless of the action taken thereon.

2. **Counsel.** In presenting and prosecuting this appeal the appellant may, if he desires, be represented at no expense to the Government by counsel or other duly authorized representatives. No interpreters are furnished by the Government for the argument before the Board.

3. **Briefs.** A brief in support of or in opposition to an appeal is not required, but if a brief is filed it shall be in triplicate and submitted *to the officer of the Immigration and Naturalization Service having administrative jurisdiction over the case* within the time fixed for the appeal or within any other additional period designated by the special inquiry officer or other Service officer who made the decision. Such officer, or the Board for good cause, may extend the time for filing a brief or reply brief. The Board in its discretion may authorize the filing of briefs directly with it, in which event the opposing party shall be allowed a specified time to respond.

4. **Oral argument.** Oral argument is optional; no personal appearance by the appellant or counsel is required. The Board will consider every case on the record submitted, whether or not oral representations are made. Oral argument in any one case should not extend beyond fifteen (15) minutes, unless arrangements for additional time are made with the Board in advance of the hearing.

   An appellant will not be released from detention or permitted to enter the United States to present oral argument to the Board but may make arrangements to have someone represent him before the Board, and unless such arrangements are made at the time the appeal is taken, the Board will not calendar the case for argument.

5. **Summary dismissal of appeals.** The Board may deny oral argument and summarily dismiss any appeal in any deportation proceeding in which (i) the party concerned fails to specify the reason for his appeal on the reverse side of this form, (ii) the only reason specified by the party concerned for his Appeal involves a finding of fact or conclusion of law which was conceded by him at the hearing, or (iii) the appeal is from an order that grants the party concerned the relief which he requested.

6. **FILING OF NOTICE OF APPEAL.** THE NOTICE OF APPEAL, IN TRIPLICATE, WITH THE REQUIRED FEE, *MUST* BE SUBMITTED TO THE IMMIGRATION AND NATURALIZATION SERVICE OFFICE WHERE THE CASE IS PENDING. THE NOTICE OF APPEAL IS *NOT* TO BE FORWARDED DIRECTLY TO THE BOARD OF IMMIGRATION APPEALS.

GPO 947-288

U.S. DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of :	X	
JOHN WINSTON ONO LENNON	X	File No. A17 595 321

RIDER TO NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

The decision should be reversed because:

Deportation proceedings were improperly and discriminatorily instituted and should have been terminated; their institution and continuance were an abuse of administrative discretion; maintenance of deportation proceedings which prevent compliance with U.S. Court orders is improper.

As to the sole ground for deportability sustained by the Immigration Judge, the government failed to prove that the disputed allegations of fact were true by clear, unequivocal and convincing evidence.

The Immigration Judge committed error and denied Respondent due process in refusinf to terminate the proceedings, in refusing to permit Respondent to dispose a knowledgeable representative of the Immigration Service, in refusing to grant adequate time for submission of rebuttal briefs, and in refusing to defer his decision to await the outcome of proceedings in England relating to the Respondent.

Respondent's application for adjustment of status should not have been denied and he should not have been held excludable under Section 212 (a)(23) of the Immigration and Nationality Act as his conviction is not included in Section 212(a)(23); the Immigration and Nationality Act contains no definition of the term "marijuana" and since deportation visits great hardship upon an alien, the language used by Congress should be strictly construed and any doubt as to its meaning resolved in favor of the alien; the statute under which Respondent was convicted permitted a conviction to be entered without proof of "mens rea" and punished a type of possession not contemplated by Section 212(a)(23) of the Immigration and Nationality Act; only convictions for possessing marijuana under certain circumstances which would enable the accused to traffic in the forbidden substance are included in Section 212(a)(23); the use of the British conviction as a bar to residency would deny Respondent due process; the legislative history of Section 212(a)(23) confirms that Respondent's conviction is not therein included.

Respondent's conviction should have been considered a petty offense under Section 212(a)(9) and his application for permanent residence should therefore have been granted.

Section 212(a)(23) of the Immigration and Naturality Act is unconstitutional insofar as it relates to the "illicit possession of marijuana"; its application to the Respondent effectively denies him due process of alaw and the equal protection of the law and violates the right to privacy.

In view of the novelty of the factual and legal issues and the complexity of the proceedings as well as of the decision rendered herein, Respondent respectfully requests that he be granted until October 2, 1973 to file his brief in support of this appeal.

Respectfully submitted,

LEON WILDES, ESQ.
Attorney for Respondent,
JOHN WINSTON ONO LENNON
515 Madison Avenue
New York, New York 10022

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLaza 3-3168

CABLE ADDRESS
"LEONWILDES," N.Y.

October 17, 1973

Immigration and Naturalization Service
20 West Broadway
New York, New York 10007
Attention: Hon. Ira Fieldsteel,
Immigration Judge

Re: John Winston Ono LENNON
A17 597 321

Dear Sir:

In further support of my motion dated August 1, 1973 in the above-captioned matter, as supplemented by my letter of September 20, 1973 requesting your immediate ruling thereon, I respectfully wish to add to my request for relief that the deportation proceedings herein be reopened for an evidentiary hearing upon the issue of the prejudgment involved in this case.

As you will recall, I have at various stages of the case claimed prejudgment with respect to a number of the procedures and practices followed by the government, including the unexplained refusal to entertain any and all extension applications; the failure to adjudicate third preference petitions until the proceedings were temporarily restrained through judicial intervention; the unprecedented institution of deportation proceedings in a case fraught with serious humanitarian considerations following the extraordinary and precipitous procedure of retroactive termination of voluntary departure time; the denial of my client's due process right to prepare and present an available defense to the deportation proceedings through the failure to furnish information to which he is entitled under the Freedom of Information Act and the denial of his request to depose knowledgeable government officials as to the practice of the Service in other similar cases; and numerous other acts on the part of the government, each of which bespoke prejudgment, and which, in sum, amounted to a gross denial of due process and a deprivation of constitutionally protected rights.

In my opinion, my client is entitled to an evidentiary hearing on the issue of such prejudgment which, upon information and belief may

have resulted from wiretaps, surveillance or other illegal acts on the part of the government. I attach hereto as new evidence a copy of what appears to be a government memorandum whose contents blatently call for such prejudgment on the part of the Service, apparently the product of another government agency. Additionally, at such reopened hearing, my client would offer testimony as to other evidence of possible wiretaps and of the specific type of surveillance mentioned in the attached memorandum which have occurred since it was rumored he was scheduled to appear at an anti Vietnam War demonstration at the 1972 Republican National Convention.

The gross denial of due process which may have occurred should, by now, be perfectly obvious. The government knew in advance that the precipitous revocation of voluntary departure time and institution of deportation proceedings in this case would cut off a number of options which were available to my client to permit him to continue his numerous personal and business matters in the United States in one of several available legal nonimmigrant statuses; the institution of proceedings relegated him to an application for permanent residence which was likewise known by the government to be one which could be administratively rejected. The Immigration Service was either a knowing participant or an unwitting accomplice in this apparent plot.

There is ample legal authority for the reopening of a case to take testimony concerning such alleged illegal action not reflected in the record on the issue of prejudgment. Accardi v. Shaughnessy, 347 U.S.260 (1954). Buffalino v. Kennedy 323 F.2d 738 (C.A.D.C.1966) and for the conduct of a full evidentiary hearing on such issue. As you know, such a hearing was ordered by the Court to be held before the Immigration Judge in the Buffalino case. In the face of such an obvious possible miscarriage of justice, there should be no need for us to request the remand of the case for an evidentiary hearing before the Board of Immigration Appeals or a court.

This motion is timely. Much of the evidence which forms the basis of this motion to reopen was not available at the time of the original proceedings. Elementary fairness also requires that notice be taken of the fact that earlier suspicions as to illegal activities on the part of the government were hardly believable until the Senate Watergate hearings brought to light the occurrence of similar illegal activities being performed by various governmental agencies. Certainly the respondent should not be prejudiced by the fact that the government may have succeeded in covering up its il-

legal activities or that they were not discovered or believed at an earlier date. Moreover, the evidence to be offered at such reopened hearing both by respondent and by the various government agencies involved is clearly material to the issue of prejudgment and is fully authorized by statute,18 U.S.C. 3504.

It is submitted that the Immigration Judge may, and in the interest of justice, should, rule upon this motion to grant the requested relief since no decision has been rendered by the Board of Immigration Appeals on the appeal herein. In addition, the record of appeal is necessarily incomplete as it now stands and the evidence which will be adduced at the requested evidentiary hearing is a necessary part of the record before the Board of Immigration Appeals and will, at the very least, complete the record and permit the respondent to brief this essential defense as part of his appeal. The Board, when it considers the full appeal, will thus have a complete record before it. The issue to be determined is threshhold in nature and no appeal could properly be considered complete without it.

The action taken by the government in my client's case, as you know, has been likened to that taken in Charlie Chaplin's; it now unfortunately appears more like that taken in Daniel Ellsberg's. There should be no necessity to take this case through further appellate procedures without first discovering the true facts about the government's alleged illegal acts in this case and determining the fundamental issue of prejudgment. Such a hearing is required by statute, 18 U.S.C.3504 and by the case law, Accardi v. Shaughnessy, supra; Buffalino v. Kennedy, supra.

It should be pointed out finally that the limited reopening of proceedings for the purposes stated above would cause no injury whatsoever to the government which has thus far expressed no opposition to this motion, while the failure to reopen proceedings might perpetuate outrageous illegal government activity and prejudgment resulting in a serious denial of my client's civil and constitutional rights. What respondent requests simply and plainly, and what he is entitled to under the applicable statute, is that the government show that it has not acted improperly nor prejudiced the various applications, by disclaiming all such wrongdoing in an adversary proceeding.

WHEREFORE, respondent respectfully requests that the deportation proceedings be reopened for the purpose of conducting an evidentiary

hearing for the purposes stated above, and,

IT IS FURTHER REQUESTED that the Immigration Judge permit oral argument with respect to this motion and set a date and time for such oral argument as soon as reasonably possible.

Respectfully submitted,

LEON WILDES
Attorney for Respondent
515 Madison Avenue
New York, New York 10022

cc: Sol Marks, District Director
Immigration and Naturalization Service

cc: Vincent A. Schiano, Esq., Chief Trial Attorney
Immigration and Naturalization Service

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
Plaza 3-3408

CABLE ADDRESS
"LEONWILDES," N. Y.



October 23, 1973

Board of Immigration Appeals
521 12th Street, N.W.
Washington, D.C. 20530
Attention: Mr. Maurice Roberts, Chairman

Re: John Winston Ono LENNON
A17 597 321

Dear Mr. Roberts:

This will confirm my telephone conversation with you of this morning in which I requested a 60 days continuance of oral argument in connection with the appeal regarding the proceedings of the above-named.

Enclosed herein please find motion papers dated August 1, 1973, September 20, 1973 and October 17, 1973 submitted to the Immigration Judge, as well as the Immigration Judge's reply dated September 12, 1973.

Also enclosed are two actions filed with the United States District Court, SDNY - Lennon v. Richardson et al filed on October 17, 1973 and Lennon v. Bork et al, being filed on October 24, 1973.

Thank you for your attention to this matter.

Very truly yours,

LEON WILDES

LW/ts
Encls.
Certified Mail: Return Receipt Requested

Board of Immigration Appeals

Memorandum for the File

In re: John Lennon

File: A17 595 321

Attorney Leon Wildes telephoned from New York at noon and requested a continuance of oral argument, now scheduled for October 29, 1973. He stated that in August of this year, after the record on appeal had been forwarded to the Board, he ascertained that there was possible wrongdoing on the part of the Government in the deportation proceedings. He then made a request to Immigration Judge Fieldsteel for disclosure under 18 U.S.C. 3504. The immigration judge felt that he did not have jurisdiction to hear such a motion. Mr. Wildes therefore contacted trial attorney Schiano and asked him to declare whether the Government had engaged in illegal electronic surveillance. Mr. Schiano refused to give him a responsive answer. Mr. Wildes recently asked Immigration Judge Fieldsteel to expand the record to include the foregoing matters.

Mr. Wildes has also tried to get records from the Service of how other "non-priority" cases have been treated. He never received a response from the Service and has been informed that if he wishes this information he will have to proceed under the Freedom of Information Act.

Mr. Wildes stated that he has a copy of a memorandum indicating that the case has been prejudiced from the start; that at the time the Republican National Convention was scheduled from San Diego in 1972, instructions were sent to the Immigration Service that the respondent and his wife were not to receive any relief. Mr. Wildes stated that the Government was under the impression that the respondent and his wife had planned to join demonstrators at the Convention

in an anti-Viet Nam war demonstration, a fact which the respondent and his wife deny. As a result, the Government had determined that the respondent and his wife should be ousted as quickly as possible and that instructions to that effect were given to the Immigration Service. Mr. Wildes intends to bring these allegations out by evidence, to show prejudgment. He also intends to adduce evidence of illegal electronic surveillance and he is filing a court action under the Freedom of Information Act today.

Under the circumstances, Mr. Wildes feels that it would be premature to argue the case on the merits next Monday, as the record is incomplete. He has tried to get in touch with the District Director at New York to seek consent to a continuance, but Mr. Marks is unavailable. Mr. Schiano is also away from the office. Mr. Wildes contacted Mr. Schiano at home and was informed that Mr. Schiano will abide by whatever decision the Board comes to. Mr. Wildes asked for a continuance of about 60 days, in the thought that in the interim the situation would be crystalized.

I informed Mr. Wildes that none of the information he had brought to my attention is reflected in the record now before the Board. If he has any documentation which the Board should consider in support of his motion for a continuance, he should see to it that it reaches the Board by the fastest means possible. I told Mr. Wildes that I would have to ascertain the Service's position with respect to the requested continuance and would have to refer the question to the Board before I could advise him and this could not possibly be done today. I promised to telephone him the Board's decision on the requested continuance as soon as possible.

I informed Mr. Appleman of the foregoing and asked him to advise me of the Service's position with respect to the requested continuance.

Maurice A. Roberts
Chairman

October 23, 1973

October 23, 1973

Memo For File

Subject: JOHN LENNON, A17 597 321

Mr. Appleman called Mr. Schiano, TA, NYC today to obtain information on the Lennon case.

He stated that Mr. Wildes, attorney for the alien had called Chairman, BIA requesting a continuance, of oral argument rescheduled for next Monday, Oct. 29, 1973; that the attorney claims that he has in his possession a letter from a government agency that shows discrimination against the alien.

Mr. Appleman asked Mr. Schiano what was behind the claim for a continuance and how Mr. Schiano felt about the request. Mr. Schiano said that he did not know all of the details but he was under the impression that Mr. Wildes has asked to review some other cases of the I&N Service not relating to the immediate case and his request was denied, and because of action concerning his court case Mr. Wildes feelsit would be premature to go on with the hearing on the Lennon case scheduled for Monday, Oct. 29, 1973 until the outcome of the court case; that Mr. Wildes also had a motion to reopen pending. Mr. Schiano told Mr. Appleman that he was against any continuance on Lennon.

He also advised that he would contact him when he found out some more information.

CC: Board of Immigration Appeals

I.A. Appleman

October 24, 1973

Memo For File

Subject: JOHN LENNON, A17 597 321

Mr. Schiano called back to advise that he had in his possession a copy of action filed by Mr. Wildes.

The action seeks to:

(1) Enjoin the Board from rendering a decision until admissions, denials and or hearings are forthcoming.

(2) A court hearing to determine illegal action by government.

(3) A court hearing on the basis of prejudgement.

(4) A court hearing on the basis of rights violated.

Mr. Schiano stated that this action has been filed.

Mr. Appleman stated that he would talk with Mr. Isenstein regarding the case and get back to him.

Oct. 24, 1973

I advisdd Mr. Isenstein, Acting General Counsel, of all developments to date. He said he would call INC. Service opposes any continuances.

Oct. 24, 1973

Told Chairman of above background and that we opposed any continuance.

I.A. Appleman

cc: Board of Immigration Appeals

Board of Immigration Appeals

Memorandum for the File

In re: John Lennon

File: A17 595 321

Attorney Leon Wildes telephoned at 11:30 a.m. He stated that his primary concern at the present time is to have the Board withhold decision until the pending court litigation is concluded and he would like to have an opportunity to convince the Board that this should be done. He is unprepared to go ahead with the argument on Monday and cannot prepare over the coming weekend because he has made arrangements to go to an out-of-town barmitzvah. Insofar as concerns the merits, he does not plan to spend much time on oral argument as he will rely heavily on what has been stated in the briefs already filed. He requested that the oral argument be continued briefly, so that he can have an opportunity to collect his thoughts and communicate with his client, who is now on the west coast and whom he cannot reach. Mr. Wildes stated that in making determinations with respect to the course of appeal he should have an opportunity to consult his client.

Mr. Wildes stated that he would be available to present his oral argument on very short notice, in the event that there should be a cancellation in a week or so. As far as he is concerned, his presentation will take very little time. I pointed out that this Board might have many questions to ask, not only with respect to the merits but also with respect to the new material which he has only recently brought to our attention. I informed Mr. Wildes that I would put his request to the Board, after ascertaining the Service's position, and would let him know.

I checked with Ginny Boyd, who informed me that this case can be set down for Tuesday, November 6 (which is election day) or at a date not long thereafter by rescheduling some other cases. I informed Mr. Appleman of Mr. Wildes' request. He stated that the Service's position, for the record, is that it opposes any continuances, even a brief one requested by Mr. Wildes. I requested the Board members to convene after 2:00 p.m. to consider this latest request.

Maurice A. Roberts
Chairman

October 26, 1973

Board of Immigration Appeals

Memorandum for the File

In re: John Lennon

File: A17 595 321

The letter dated October 23, 1973, with enclosures, from Mr. Wildes was received at the Board late yesterday afternoon and I immediately circulated the material to the Board members. We conferred this morning on Mr. Wildes' telephonic request for a 60-day continuance of oral argument. The Board concluded that the request should be denied. At oral argument, counsel will be expected to proceed on the merits, but he may also bring up the new matters advanced in support of his request for continuance.

I telephoned Mr. Wildes and informed him of the Board'd decision. He expressed a sense of shock, stating that he had never anticipated that his request for a continuance would be denied. He is not sure that he will appear for oral argument. I pointed out to him that this is a matter for his judgment as counsel, but suggested that, if he decides not to appear, he should notify the Board at once, to avoid needless expenditures of time and effort here and in the Service. Mr. Wildes stated that he would call me back later in the day in this regard.

Maurice A. Roberts
Chairman

October 26, 1973

BEFORE THE BOARD OF IMMIGRATION APPEALS

Oral Argument: Oct. 31, 1973

In Re: JOHN WINSTON LENNON

File: A-17595321

Board: Mr. Roberts, Miss Wilson, Mrs. McConnaughey, Mr. Torrington, and Mr. Maniatis

Heard: For Respondent: Leon Wildes, Attorney
515 Madison Ave.
New York, New York 10022

For Immigration Service: Vincent A. Schiano, Trial Attorney

Request: Action be deferred pending court litigation - and 245 Relief

The third cause of action requests a hearing to determine whether my client's civil or constitutional rights have been violated by illegal wiretap or other method of surveillance. Among the exhibits to that complaint is a copy of what appears to me to be a government memorandum, which can only be categorized as shocking. It is entitled "The Supervision of the Activities of Both John and Yoko Lennon."

I won't attempt to paraphrase it because it is short and I prefer to read it.

Chairman: Mr. Wildes, the copy which was appended to the papers you sent us seems to have the right margin missing. I don't know if that was so in the original or.....

Attorney: It was not, that is from my photocopying machine, I will be pleased to exchange that for you. It is from the Supervisor, Intelligence Division, Unit 2, to the Regional Director, Group 8, as follows: "It has come to the further attention of this office that John Ono Lennon, formerly of the Beatles and Yoki Ono Lennon, wife of John Lennon, have intentions of remaining in this country and seeking permanent residence therein, as set forth in a previous communication this has been judged to be inadvisable and it was recommended that all applications are to be denied."

"Their relationships with one (6521) Jerry Rubin, and one John Sinclair (4536), also their many commitments which are judged to be political and unfavorable to the present administration. This was sent forth to your office in a previous report. Because of this and their controversial behavior, they are to be judged as both undesirable and dangerous aliens."

"Because of the delicate and explosive nature of this matter the whole affair has been handed over to the I&N Service to handle. Your office is to maintain a constant surveillance of their residence and a periodic report is to be sent this office. All cooperation is to be given to the I&N Service and all reports are to be digested by this office."

It should be obvious that if the contents of the memorandum are true, and if they were communicated to the officers of the Immigration Service responsible for the decision in the Lennon case, what results is a strong case for prejudgment and a patent miscarriage of justice.

Chairman: Counsel in his brief has referred to a decision by an Immigration Judge in Boston in which he terminated proceedings where the charge had been based on a marijuana conviction, but the actual conviction involved hashish. And the Service had taken an appeal from that decision and then the General Counsel

had withdrawn the appeal. Now counsel has argued that this establishes a legal policy, and if he were to argue the merits I would ask him about that; but is there any established policy in a decision of an Immigration Judge, if the Service withdraws appeal or simply doesn't take an appeal?

Mr. Schiano: There may be many considerations, the courts have coordinate jurisdiction, binding upon eachother. It may make interesting reading. I think jurisdiction was involved in that case. The decision was based on an inadequate understanding of the subject matter, but he had a more sophisticated record, and we do wish a decision on the merits concerning that. We are not bound by the decision of Boston at all, nor is this Board.

Chairman: One thing further, counsel has argued at great length in his brief that the British statute which is here involved, did not require any mens rea or knowledge on the part of the defendant, that is a culpable knowledge, that what he possessed was in fact a forbidden substance. And it is his position that this sort of conviction is not what Congress contemplated when it made a conviction under Section 212(a)(23) a grant of inadmissibility.

Now he has countered the citations in the Immigration Judge's decision with other citations, some later ones, and he has given us a fairly exhaustive development of the law in England. We don't have any brief from you but would you care to comment on that portion of counsel's argument?

Mr. Schiano: I believe the recitation both by counsel and the higher officials might have been very apt before a British court at the time the case was being tried, and what perhaps might have been considered instructions to the jury as to what they should or should not find, but once guilty of, or once guilt has been established by a plea of

guilty or conviction upon the record, I think we are bound by that record of conviction.

Chairman: Regardless of what the statute requires for conviction?

Mr. Schiano: The only recorded matter when we review foreign convictions is when there is a conviction in absentia, a political crime, or some rare, unusual situation. For us to sit now, in an appellate jurisdiction upon the British court, and what is British law, would open up Pandora's Box to almost every foreign conviction, based upon subsequent self-serving declarations as to what the mental status of that defendant might be or might have been.

He could have pleaded this before the British court and if he wished to say the state of the law prevented from pleading innocent, I don't think we should accept that, if he said I had to plead guilty even though innocent. I don't think that creates the issue.

Chairman: I don't think that is what counsel is asserting. I think counsel is asserting it is no basis for a plea of innocence that the defendant did not in fact know the nature of this white powder he possessed.

Mr. Schiano: Is it a question of fact he knew or not?

Chairman: No, it is a question of law he is asserting.

Mr. Schiano: We do have a sort of Freudian slip, in the recitation where Mr. Lennon states he was tipped off as to the raid and cleaned out the apartment, and he may have overlooked the camera case, and this is not in the record of the foreign conviction. It is in the present

recitation; and are we now to accept these recitations and allegations? Because that is what we would be opening the door to. The law says if he was found in possession, and was convicted of possession, of an illegal substance, I don't think we want to sit here on that basis.

Mr. Torrington: I don't think, Mr. Schiano, that you have mentioned the British case of Lockyer v. Gibb, by Judge Parker, which was partly set forth on Page 20 of the Immigration Judge's decision. I noticed that the brief filed by the American Civil Liberties Union as Amicus Curiae also quoted from Judge Parker's opinion in Lockyer v. Gibb, 2 Q. B. 243, a 1967 decision, which is a fairly recent case.

Apparently, and according to the brief of the American Civil Liberties Union, the Judge elaborated on his statement as follows, Page 20, but there is something else added in the brief, and I have not read the decision in the original volume, but it is quoted in the brief and in the Immigration Judge's decision as follows, in interpreting the provisions of the statute with which we are dealing here, interpreting the British statute:

"In my judgment it is quite clear that a person cannot be in possession of some article which he or she does not realize is, for example, in her handbag, in her room, or in some other place over which she has control." Then the Immigration Judge says: ".....completely innocent and unknowing custody or potential control over a drug is not possession within the meaning of the act and regulations."

That, it would seem to me, would refute

the contention that the British or English statute should state this doesn't require mens rea.....

Mr. Schiano: It would.....

Mr. Torrington: Mens rea for conviction of possession of marijuana.

Mr. Schiano: It would depend upon a finding of guilt, if they found he had a guilty knowledge of what he was in possession of. Once they found him guilty, they determined as an element of truth thereof, of the element of the crime he did have guilty knowledge of, and now he wishes to add an extraneous fact outside the record by his present claim of innocence.

Mr. Torrington: I have a question of Mr. Schiano. The statute under which respondent was convicted in England deals with cannabis resin, and my question to you is, because there was an expert witness who testified I believe, is cannabis resin something quite different from marijuana? Or is it just something derived from marijuana?

I would like you to comment first on cannabis and then on resin, and tell us, as far as you know, what cannabis resin is, and the reason

I am asking that question is that counsel has contended that cannabis resin is something entirely different from marijuana.

Mr. Schiano: I don't think he says it is entirely different. He says it may not be comprehended within the statutory meaning of marijuana even though cannabis resin is an exudation of the marijuana plant. Even in the context of his own expert, and the legislative history, what was Congress getting at here? Marijuana is one of the plants which contains an hallucinogenic agent, which is an evil as determined by Congress, present in different parts of the plant in various intensity, the most intensity being in the resin, the lesser intensity being in the leafy material.

In order not to broaden the argument more, and without getting into what I believe is a statutory definition, are we to assume Congress said marijuana is a bad thing and we want to make sure it is included in the law? We want to make sure we override these--- we want to include them in the law and say any conviction for violation relating to the possession of marijuana comes within 212(a)(23), and we use the word marijuana specifically in that context of the law.

Were they referring merely to the growing of the plant or the plant held as a weapon in the hand of someone? Or were they getting into the hallucinogenic contention of the plant used in different ways? Used for smoking and the resin which may also be injected by smoking, or in any other form? But probably 10 times more intense or with worsening effect of the leafy portion of the plant? They both

contain the hallucinogenic agent. Congress intended to get at the part of the plant that contained this hallucinogenic agent. Assuming it was that part of the plant which does not contain it, there probably would never have been an arrest to begin with. It had to be that part which contained the hallucinogenic agent, but toxically there are certain distinctions made in different parts of the plant and different products of the plant.

There is a part of this plant which has commercial uses, the fiber part which has or is used for the making of rope and what not. I understand in Japan where they were so concerned with the resin of this plant for commercial uses rather than the private, so-called uses, they now developed a so-called marijuana plant which does <u>not</u> contain this agent, and cannot be used to make the cigarettes or hashish or cannabis resin, and can only be used for commercial uses, for the making of fibers. It is marijuana when used in this section of the law.

Mr. Torrington: In a few words you state that the term marijuana as used in our statutes comprehends cannabis resin, is that correct?

Mr. Schiano: Correct.

Attorney: At this point I think something outrageous <u>has</u> been said. Counsel for the government; and <u>I</u> was hoping not to be drawn into this, but counsel for the government has at all times emphasized how narrow this Board's jurisdiction

is, and how I myself keep to that jurisdiction, and he now is interpreting words of Congress that is not in the statute. The statute says marijuana, the word marijuana has existed in the statute since 1931, and I traced that in my presentation. There are 4 parts to that statute, 2 separate sections. It has been moved around but at no time was there ever any indication that it meant anything else.

We have had an expert testify what marijuana is and what cannabis resin is, and he said they are two different substances. The government has had this in other prosecutions where they have taken the opposite view, and they claimed that marijuana and cannabis resin are the same given substances.

We have a history of this which is so replete with contradictions on the part of the government, and this is one point that I cannot conceivably see this Board rule on as a matter of law within its jurisdiction. Cannabis resin is a defined term under the statute that Mr. Lennon was convicted under. It is defined as not being cannabis, one including the hashish and one including the marijuana.

We get over here and we want to know what does the word "marijuana" mean in the exclusion statute? And we trace the history of that, and we find that the government argues that it means what the 1954 Internal Revenue Code said it means, and showed it existed in the law before the Internal Revenue Code came about. And I traced it back to show even in the cases cited, but for the change required in the law, those cases involved marijuana and not hashish.

They involved a certain part of the plant. This is a technical prosecution, and I unfortunately have to be highly technical in its opposition, and it seems to me it is not a function of this Board to guage what Congress should have done. In my opinion Congress, if they hoped to include something, but they never included it. Now we are at a point where we must determine what is the meaning of marijuana? And all the principles of jurisprudence in this field requires interpretation of the meaning of words so that any doubts involved are held in favor of the alien.

If the Immigration Act was one which obviously wanted to include everything, it would have included much more serious threats than marijuana and LSD, but it did not. It stated 2 categories, it stated a general category of narcotic drugs, and a specific substance of marijuana. Now what does marijuana mean?

Mr. Torrington: I want a little more from you because you mentioned the expert's testimony which I read a number of times. He never tells us or tells the Immigration Judge what cannabis resin was, and why it was so different, as I understand it, and I understand it from his testimony, although he never went so far as to say that cannabis resin is a part of marijuana.

Attorney: Not a part of marijuana, it is a part of the species cannabis in a general term.

Mr. Torrington: Isn't it true the name of marijuana in various statutes in science and literature is equivalent to the Latin word "sativa", cannabis sativa?

Attorney: Lucky we are not interpreting one of those statutes but are interpreting only the Immigration Act, which to me has a very clear

legislative history, and a very clear definition, which if we interpret it in terms of the caselaw, requires us to give John Lennon the benefit of the doubt as to the meaning of marijuana.

Mr. Torrington: What <u>is</u> the meaning in your opinion?

Attorney: From your question, Mr. Torrington, I think you will admit it is unclear, and if that is the case, then should not that doubt benefit the accused?

Chairman: I would like to raise a question just on that point, and I was not going to ask it, but <u>you</u> have raised it. Is this a permissible way of arriving at the construction of a statute? Ordinarily when there is some ambiguity or doubt as to the meaning of a word or phrase in a statute, we can go to the legislative history, but you have gone beyond that. You have presented evidence, expert testimony. Now, is this permissible? Can we consider the testimony of an expert or others?

Attorney: Can I answer, the government did not object to it and it is part of the record which is before this Board.

Chairman: This may redound to your benefit, I don't know. There is another term in this Section 212(a)(23). Suppose the government brings an action against somebody it doesn't like, and it brings experts in to testify that this substance, which happens to be rose petals, or tea, fits within the

generally accepted definition of whatever the statutory term is. Is this permissible, and is this how legal questions of statutory construction are to be determined?

Attorney: I think it is relevant evidence, and I think unless it is ruled out of order, and that question arises, it must be considered by an appellate body.

Mr. Schiano: There was a statement by me at the hearing where I tried to bring the attention of the expert that we are dealing with statutory terms, to be interpreted accordingly, and we did offer legislative history as part of the interpretative process. Now counsel seeks to create doubt and ambiguity by claiming it did not contain those things, and that doesn't make it an error in the law, because it didn't contain all the harmful substances we wish to control.

It may be like the time when they asked Frank Costello why he wasn't at Appalachia, and he said neither was Leo Durocher, and this is not a prosecution. Mr. Lennon is an applicant in a sense, for admission, and must establish clearly that he is admissible, and doesn't come within 212(a)(23). He is not being deported, he is being denied relief as not having been found eligible for such relief.

Mr. Torrington: I should like to continue what I could not pursue further when I last questioned counsel with regard to the term "marijuana." Counsel wondered whether I was not going to admit certain things, but as a member of this tribunal it is not my function to make admissions.

However, it would appear to me, and I would like you to comment on this, that the general term marijuana by me would have to include a part of marijuana, namely the resin of marijuana, whether you call it cannabis or cannabis sativa, the resin seems to be the more potent part, which is found in <u>all</u> parts of marijuana.

Now why then do you feel that the general term, which would contain only resin, only in part, should exclude the more potent hallucinogenic parts of the plant, that part which does the actual damage?

Attorney: Very simply, and perhaps I can illustrate with an example. The general term is not a rose, the general term is a flower. Although a rose may have petals and leaves, it is still a flower. The general term is not marijuana, the general term is cannabis sativa (L). One of the parts of the plant produces a species called cannabis resin, which is the resinous part of the plant. The other part of it may produce what we know as marijuana. I am not doubting that other statutes may use this in other ways, but I doubt that there is any question that the general term is cannabis sativa with the (L) meaning Latin I understand.

Mr. Torrington: Would the general term be "rose", and the specific term be "rose petal", other than "flower"?

Attorney: Iwas using that example to point out, you have chosen that part of the example which really should be relegated to a specific part, and you have designated it as the general term. It is very easy to substitute for cannabis sativa, marijuana, and say one of the parts or species of marijuana is the hashish.

Mr. Torrington: Isn't that correct? Isn't hashish an extract from the more powerful part?

Attorney: Not of a marijuana plant.

Mr. Torrington: It is not?

Attorney: Of a species of the plant called cannabis resin from which two substances are derived; one is called marijuana and one is called hashish, or the resin.

Mr. Torrington: In other words it is your contention, I am trying to pin you down in a way, that Congress should have used the Latin word cannabis "Sativa", although not everyone knows Latin, rather than the common word "marijuana."

Attorney: That is what the hearing officer used in the Boston case which was cited as a precedent or a policy statement; and while I have been drawn into it I might point out that if the government can choose when it wishes to reach a decision and call it a precedent because it is published in the book, that they determine should have precedent value, and have another case and have its attorney come and say it is only one of 31 Judges, and we think that the Judge in New York is more enlightened, that is not a posture for a board of review on the law to take.

Particularly on the basis of what was said in the Varga case, where the question was, has the government adopted a certain view? And it was determined the Solicitor General or the General Counsel can enjoin Congress when he determines not to file an appeal, that is adopting the view below as the government view. We have something much stronger in this case, the government determined to file an appeal, and its General Counsel chose, knowing the full consequences, to withdraw the appeal.

I believe that is a binding precedent on this Board, and at least is very persuasive, and the fact it took me a year to find it, and the government never chose to publish that among its Interims, which it chooses to be bound, I believe, is not the proper consideration. I think it should be considered as a precedent, or at least very persuasive evidence.

Mr. Torrington: One more question before I give counsel for the Service a chance to respond, which I hope will be my last question, and that is, is it your contention that if someone in this country is apprehended with a quantity of cannabis resin, and you also mentioned hashish, then he cannot be prosecuted under a statute making unlawful the possession of marijuana?

Attorney: I appreciate that question because it pinpoints the issue I wanted to make. Every statute has got its own frame of reference as to the meaning of its terms. The government brief indicated that in the smuggling statute the government very clearly sets out what Congress defined as marijuana. It specifically sets it out, as used in this section of law, and it says in the Food & Drug Act marijuana shall have the followingmeaning, and every government agency and Congress, every time it uses the term, has the right to define it or fail to define it any way it wishes.

It is this Board's function to find out what is the meaning of the term marijuana, not under a criminal statute that a man might be convicted in one of the 50 states or any kind of country abroad, but only under Section 212(a)(23) of the I&N Act; and there I believe my brief sets forth so clearly the meaning of the term, that John Lennon cannot be included in this.

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS
Washington, D.C. 20530

July 10, 1974

LENNON
A17 595 321

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y. 10022

Dear Sir:

Reference is made to your interest in the above case.

For your information, there is enclosed herewith copy of the decision and order of the Board of Immigration Appeals.

Sincerely yours,

Maurice A. Roberts

Maurice A. Roberts
Chairman

DOJ-

IA-1
11-15-73

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
Washington, D.C. 20530

JUL 10 1974

File: A17 595 321 - New York

In re: JOHN WINSTON ONO LENNON

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Leon Wildes, Esq.
515 Madison Avenue
New York, New York 10022

H. Miles Jaffe and
Eve Cary, Esqs.
New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(Amicus Curiae)

Of counsel:
Burt Neuborne, Esq.
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

ON BEHALF OF I&N SERVICE: Vincent A. Schiano
Trial Attorney

ORAL ARGUMENT: October 31, 1973

CHARGES:

Order: Sec. 241(a)(9), I&N Act (8 U.S.C. 1251 (a)(9)) - Nonimmigrant visitor - failed to comply with conditions of such status

A17 595 321

Sec. 241(a)(2), I&N Act (8 U.S.C. 1251 (a)(2)) - Nonimmigrant - remained longer than permitted

APPLICATION: Adjustment of status under section 245 of the Immigration and Nationality Act; motion to defer; voluntary departure; termination of proceedings

The respondent is a male alien who is a native and citizen of the United Kingdom. In 1971 he applied for a nonimmigrant visa and was found by a consular officer to be ineligible for such a visa under section 212(a)(23) of the Immigration and Nationality Act because he had been convicted of possession of marihuana. However, he applied for and received a waiver of inadmissibility under section 212(d)(3)(A) of the Act, which permitted him to be temporarily admitted to the United States as a nonimmigrant.

The respondent entered the United States with his wife, a native and citizen of Japan, on August 13, 1971. They were authorized to remain until February 29, 1972, but they did not depart from the United States by that date. They received a letter from the District Director, dated March 1, 1972, informing them that their authorized stay had expired, that the Service expected them to depart from the United States by March 15, 1972, and that failure to depart would result in the institution of deportation proceedings. On March 3, 1972, the respondents filed petitions for preferred immigration status under section 203(a)(3) of the Act. 1/

In a letter dated March 6, 1972, the District Director informed the respondent and his wife that the privilege of voluntary departure from the United States had

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1/ These petitions were approved on May 2, 1972.

been revoked pursuant to 8 C.F.R. 242.5(c) because the District Director had learned that they had no intention of departing from the United States by March 15, 1972. Orders to Show Cause were issued on March 6, 1972 charging the respondent and his wife with being deportable under section 241(a)(2) of the Act for having remained in the United States after their authorized stay had expired on February 29, 1972. Superseding Orders to Show Cause were issued the next day repeating the charge of remaining longer than authorized and adding a charge which alleged failure to comply with the conditions of nonimmigrant status under section 241(a)(9). The latter charge was not pursued further by the Service.

A deportation hearing was held. In a decision dated March 23, 1973, the immigration judge found (1) that the respondent and his wife were nonimmigrants who had stayed longer than authorized and were therefore deportable under section 241(a)(2) of the Act; (2) that the respondent's wife was statutorily eligible for adjustment of status under section 245 of the Act, and that this relief should be granted in the exercise of discretion; (3) that the respondent was statutorily ineligible for adjustment of status because he was inadmissible to the United States under section 212(a)(23); and (4) that the respondent was statutorily eligible for the privilege of voluntary departure and that he should be granted this privilege in lieu of deportation. The immigration judge ordered the respondent's wife's status adjusted to that of a permanent resident. He denied the respondent's application for adjustment of status and granted the respondent 60 days in which to depart voluntarily from the United States. An alternate order of deportation to England was entered. 2/ The respondent has appealed from that decision.

2/ The respondent declined to designate a country to which he would prefer to be sent.

A17 595 321

I. MOTION TO DEFER

On appeal, counsel has submitted a motion that we defer the decision in this case pending the outcome of two court actions filed by the respondent in the United States District Court for the Southern District of New York. These suits involve three basic claims by the respondent.

Initially, the respondent is seeking pursuant to 5 U.S.C. 552(a)(3) to compel production by the Service of certain data regarding "nonpriority" cases. 3/ Counsel believes that the records relating to "nonpriority" cases may show that the normal practice of the District Director is not to institute deportation proceedings in circumstances similar to the respondent's, and that therefore the District Director abused his discretion by issuing an Order to Show Cause in the present case.

Similar claims have been made that a discretionary Service policy, which permits certain deportable aliens who are beneficiaries of approved visa petitions to remain here until a visa becomes available, may confer an enforceable right to remain in the United States. Such claims have been consistently rejected. Vassiliou v. INS, 461 F.2d 1193 (10 Cir. 1972); Spata v. INS, 442 F.2d 1013 (2 Cir. 1971), cert. denied, 404 U.S. 857 (1971); Armstrong v. INS, 445 F.2d 1395 (9 Cir. 1971); Bouos v. District Director, 443 F.2d 30 (9 Cir. 1971); Manantan v. INS, 425 F.2d 693 (7 Cir. 1970); Lumarque v. INS, Civil No. 71-1886 (7 Cir. June 12, 1972); Discaya v. INS, 339 F. Supp. 1034 (N.D. Ill. 1972); Matter of

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3/ "Nonpriority" cases are those involving deportable aliens where the government, for humanitarian or other reasons, chooses not to proceed with deportation proceedings or not to execute a deportation order.

Merced, Interim Decision 2273 (BIA 1974); Matter of Gallares, Interim Decision 2177 (BIA 1972); Matter of Geronimo, 13 I&N Dec. 680 (BIA 1971); Matter of Li, 13 I&N Dec. 629 (BIA 1970). We have held that the decision to issue an Order to Show Cause is a matter solely within the scope of the District Director's prosecutorial discretion. Matter of Merced, supra; Matter of Geronimo, supra; Matter of Gallares, supra; cf. Matter of Anaya, Interim Decision 2243 (BIA 1973). Our function is not to review the District Director's judgment in instituting deportation proceedings, but to determine whether the deportation charge is sustained by the requisite evidence. Since the information regarding "nonpriority" cases relates to a matter beyond our scope of inquiry, we see no reason to defer our decision pending the outcome of court litigation which could take years, as counsel has admitted.

The respondent is also seeking an order compelling the Attorney General and certain Service officials to perform their statutory duty under 18 U.S.C. 3504 to affirm or deny the occurrence of illegal acts allegedly committed against the respondent, including wiretap and electronic surveillance. In addition, a hearing is requested pursuant to 18 U.S.C. 3504 to determine whether, and to what extent, unlawful acts have influenced the determinations made by the Service in the respondent's case. The respondent's request for an order enjoining deportation proceedings pending the outcome of his court actions was denied by a judge of the United States District Court for the Southern District of New York in a decision dated May 1, 1974.

Counsel claims that a court is the only forum in which evidentiary hearings under 18 U.S.C. 3504 can be conducted. We reject this contention. By its very terms, 18 U.S.C. 3504 is applicable to administrative hearings, and motions to suppress evidence have heretofore been made and adjudicated in deportation proceedings

before immigration judges. See Matter of Au, Yim and Lam, 13 I&N Dec. 294 (BIA 1969), aff'd, Au Yi Lau v. INS, 445 F.2d 217 (D.C. Cir. 1971), cert. denied, 404 U.S. 864 (1971); Matter of Wong, 13 I&N Dec. 820 (BIA 1971); Matter of Perez-Lopez, Interim Decision 2132 (BIA 1972).

Counsel did not present his motion under section 3504 at the hearing before the immigration judge. In an appropriate case, we can remand the proceedings to the immigration judge for a hearing on a motion under section 3504. Before we remand, however, we must be satisfied that a useful purpose would be served by such a remand, and that there was a valid reason why the motion was not presented to the immigration judge at the time of the hearing.

It is unclear exactly how much evidence of surveillance must be presented for a party to show that he or she is "aggrieved" within the meaning of section 3504 (a)(1). Compare In re Evans, 452 F.2d 1239 (D.C. Cir. 1971), cert. denied, 408 U.S. 930 (1972), with United States v. Doe, 460 F.2d 328 (1 Cir. 1972). However, it is not necessary for us to reach that issue.

In the present case, all counsel has presented is a photocopy of an undated memorandum indicating that some unknown party wished the respondent to be placed under surveillance. Counsel has refused to divulge how, when, and from whom that memorandum was obtained (Transcript of oral argument, pp. 25-31). We need more information than has been presented to warrant a remand for further hearing before the immigration judge.

Moreover, the thrust of the material offered seems to be in the direction of showing that someone improperly influenced the District Director to institute deportation proceedings. As we have already stated, this is a matter outside the scope of our jurisdiction. Section 3504 re-

lates to evidence. Counsel has not claimed that any evidence relating to deportability or ineligibility for adjustment of status may have been illegally obtained. In fact, since the evidence in the case consisted solely of the respondent's admitted presence in the United States after February 29, 1972, and the record of his conviction which he readily admitted, we have great difficulty in ascertaining what evidence the respondent may hope to have suppressed.

Finally, the respondent claims that his case has been prejudged by the Service. Counsel has cited Accardi v. Shaughnessy, 347 U.S. 260 (1954), and Bufalino v. Kennedy, 322 F.2d 1016 (D.C. Cir. 1963), as authority for this contention. Both of those cases involved aliens who were concededly deportable and were denied discretionary relief from deportation. Both aliens challenged the denial of discretionary relief on the ground that statements by the Attorney General had prevented the Board (or, in Bufalino, the Service) from making an independent discretionary determination as required by the applicable regulations. On appeal it was held that the district court should have given the aliens an opportunity to prove their allegations of prejudgment.

The present case, however, is distinguishable from Bufalino and Accardi. The respondent was found to be statutorily ineligible for adjustment of status. Since the immigration judge ruled the respondent ineligible as a matter of law, he never had an opportunity to exercise his discretion with regard to the application for adjustment of status. Therefore, he cannot be considered to have prejudged the respondent's application. See Marcello v. Bonds, 349 U.S. 302, 313 (1954). The only discretionary relief for which the respondent was found to be statutorily eligible was voluntary departure, and with respect to this relief the immigration judge exercised his discretion in favor of the respondent.

Counsel has characterized the immigration judge's refusal to terminate proceedings as improvidently begun, and his refusal to issue subpoenas, as instances where applications for "discretionary relief" were prejudged. Counsel's characterization is incorrect. Those requests related to matters outside the scope of the immigration judge's jurisdiction, and therefore his denials were proper as a matter of law.

The power to terminate proceedings as improvidently begun belongs to the District Director, who is an enforcement officer. The District Director declined to move for termination of the present proceedings (Transcript of hearing, p. 1). As a quasi-judicial officer, the immigration judge had no power to grant the relief sought by counsel except upon the motion of the District Director. 8 C.F.R. 242.7; Matter of Wong, 13 I&N Dec. 701, 703 (BIA 1971); cf. Matter of Vizcarra-Delgadillo, 13 I&N Dec. 51 (BIA 1968).

On June 27, 1972, after the hearing had been completed, counsel moved that the immigration judge issue subpoenas pursuant to 8 C.F.R. 287.4(a)(2). The subpoenas were sought in order to obtain evidence in support of the respondent's motion to terminate the proceedings as improvidently begun. Since the subpoenas related to a motion that the immigration judge had no power to consider, his refusal to issue the subpoenas was proper. See Kahook v. Johnson, 273 F.2d 413 (5 Cir. 1960); Matter of Anttalainen, 13 I&N Dec. 349 (BIA 1969).

If the respondent had made a sufficient showing that illegal acts took place which might have tainted evidence used at the hearing, or if he had established a prima facie case of prejudgment, we would not have to defer to a court, but rather could remand the proceedings to an immigration judge for further hearing. In essence, however, the issues in both of the respondent's court actions relate to his attempt to challenge the

District Director's decision to issue an Order to Show Cause. Determinations relating to the District Director's decision to institute deportation proceedings are not germane to our function.

We are not required to delay deportation proceedings to allow the respondent to pursue collateral remedies in the courts. Matter of Agarwal, 13 I&N Dec. 171 (BIA 1969). The ends of justice are best served by insisting upon a speedy resolution of the administrative deportation proceedings. Should the collateral challenge remain undecided upon the conclusion of the deportation proceedings, the alien could then apply to the District Director for a stay of deportation pending the outcome of his other litigation, and he could seek review of a denial of such a stay in the federal courts. This approach should afford an opportunity for any respondent with a meritorious claim to preserve his rights, while not providing an extra measure of delay for those who in reality seek nothing more. We must therefore deny the respondent's motion that we defer our decision.

In a letter to the Chairman of the Board of Immigration Appeals dated November 16, 1973, counsel expressed his understanding that we had agreed to inform him of our decision on his motion to defer prior to rendering a decision on the merits. Counsel was informed by a letter dated November 20, 1973 that such an understanding was incorrect.

Counsel had more than seven months in which to prepare for oral argument on the merits of the case. He was informed in advance of oral argument by telephone and letter, and again at oral argument, that we believed he had sufficient time to prepare and that we expected argument on the merits. It was made clear to counsel at oral argument that by not arguing on the merits he was taking the risk, if the decision on his motion was adverse, that he would not have a further

opportunity to argue. Counsel indicated that he fully understood our position (Transcript of oral argument, p. 13). He declined argument on the merits and stated that he would rely instead on his extensive brief (Transcript of oral argument, p. 47).

II. DEPORTABILITY

The respondent is charged under section 241(a)(2) with having remained in the United States after the expiration of his authorized stay as a nonimmigrant. The respondent's authorization to remain in the United States ended on February 29, 1972, but the District Director, in the exercise of discretion pursuant to 8 C.F.R. 242.5, granted the respondent the privilege of departing voluntarily on or before March 15, 1972. The District Director's discretionary action did not extend the period of the respondent's authorized stay, nor did it restore him to a lawful nonimmigrant status; the respondent remained here merely at the sufferance of the District Director. Matter of Merced, Interim Decision 2273 (BIA 1974); Matter of Gallares, Interim Decision 2177 (BIA 1972). 4/

On March 6, 1972, the District Director revoked the respondent's privilege of voluntary departure pursuant to 8 C.F.R. 242.5(c). This regulation allows a District

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4/ The discretionary grant of voluntary departure under 8 C.F.R. 242.5(b) should not be confused with action that a District Director may take under 8 C.F.R. 214.1(a) to extend the period of a nonimmigrant's authorized stay pursuant to an application made by a nonimmigrant whose authorized stay has not yet expired. We cannot agree with language on page 3 of the immigration judge's opinion which indicates that the granting of the privilege of voluntary departure by the District Director extended the period of the respondent's authorized stay.

Director to revoke voluntary departure granted under 8 C.F.R. 242.5 without notice if he ascertains that the application for voluntary departure should not have been granted. The regulations vest no authority in the Board to review such a revocation. See 8 C.F.R. 242.5 (c); 8 C.F.R. 3.1(b). The decision to revoke a grant of voluntary departure and institute deportation proceedings is a matter of prosecutorial discretion which is outside the Board's jurisdiction. Matter of Merced, supra; see Matter of Geronimo, 13 I&N Dec. 680 (BIA 1971); Matter of Gallares, supra. The respondent cannot claim that he was induced to remain past February 29, 1972 by the grant of voluntary departure, since at the time the District Director granted that privilege, on March 1, 1972, the respondent had already remained longer of his own volition.

The present case can be distinguished from Matter of Siffre, Interim Decision 2230 (BIA 1973). That case dealt with an alien who had been admitted as a nonimmigrant student for a fixed period of time. Before the authorized stay had expired, the District Director attempted to "revoke" the alien's nonimmigrant student status and to charge him under section 241(a)(2) as a nonimmigrant who remained longer than permitted. We held that the District Director had no authority to "revoke" a nonimmigrant status. If the District Director believed that the alien was violating the conditions of nonimmigrant status, he should have instituted deportation proceedings under section 241(a)(9) for failure to maintain nonimmigrant status. The District Director's other option was to wait until the alien's authorized stay had expired and then, if the alien failed to depart, to institute deportation proceedings under section 241 (a)(2) based upon the alien's having remained longer than permitted.

The respondent's situation, however, is quite different. His authorized stay expired on February 29, 1972. At that point he lost his lawful nonimmigrant

status. He remained in the United States merely as a deportable alien who had been granted the discretionary privilege of departing voluntarily pursuant to 8 C.F.R. 242.5. The decision whether or not to grant voluntary departure under 8 C.F.R. 242.5, or to revoke such privilege once granted, is a matter within the sole discretion of the District Director. We conclude that deportability under section 241(a)(2) of the Act has been established by evidence that is clear, convincing and unequivocal.

III. ELIGIBILITY FOR ADJUSTMENT OF STATUS

The respondent applied for adjustment of status under section 245 of the Act. In order to show eligibility for adjustment of status, an alien must establish that he was inspected and admitted or paroled into the United States, that he is eligible to receive an immigrant visa, that he is admissible to the United States for permanent residence, and that an immigrant visa is immediately available. Since adjustment of status is a privilege, the alien has the burden of establishing his eligibility. 8 C.F.R. 242.17(d); Montemurro v. INS, 409 F.2d 832 (9 Cir. 1969); Cabrera v. INS, 415 F.2d 1096 (9 Cir. 1969).

The immigration judge found that the respondent was not admissible to the United States for permanent residence because he was excludable under section 212(a)(23) of the Act as one who had been convicted of violating a law relating to the illicit possession of marihuana. Section 212(a)(23) provides for the exclusion of:

> Any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marihuana . . . .

A certified copy of a record of conviction was placed in evidence, showing that on November 28, 1968, the respondent pleaded guilty in the Marylebone Magistrates'

Court (England) to a charge of having a dangerous drug, cannabis resin, in his possession without being duly authorized (Ex. 10). The British statute which he violated was Regulation 3, Dangerous Drugs (No. 2) Regulations, Dangerous Drugs Act of 1965. Copies of the British statute and regulations were introduced as Exhibit 11. The pertinent statutory provisions are:

Dangerous Drugs Act 1965, Section 1:

> The drugs to which this Part of this Act applies are raw opium, coca leaves, poppy-straw, cannabis, cannabis resin and all preparations of which cannabis resin forms the base.

Regulation 3, Dangerous Drugs (No. 2) Regulations 1964:

> A person shall not be in possession of a drug unless he is generally so authorised or, under this Regulation, so licensed or authorised as a member of a group, nor otherwise than in accordance with the provisions of these Regulations and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

The respondent has admitted that the record of conviction relates to him (Transcript of hearing, p. 30). Nevertheless, the respondent contends that his conviction does not place him within the exclusion provision of section 212(a)(23) because (1) the British statute under which he was convicted did not require mens rea, and (2) cannabis resin is not "marihuana" within the meaning of section 212(a)(23).

As to the contention regarding mens rea, it is maintained by counsel in his brief that a binoculars case containing cannabis resin was found in the respondent's

house, but that the respondent had no knowledge of the presence of the drug (Respondent's brief on appeal, p. 54; Transcript of hearing, p. 81). He pleaded guilty, counsel alleges, because lack of knowledge was not a defense to a prosecution under the Dangerous Drugs Act of 1965 (Transcript of oral argument, p. 46). Therefore, counsel claims, the respondent's plea of guilty was an admission only of physical control of a binoculars case which proved to contain a dangerous drug (Respondent's brief on appeal, p. 62). Counsel argues that the respondent did not admit any knowledge of the drug's presence, and that he therefore would not come within the class of persons whom Congress wished to exclude under section 212(a)(23).

The provisions of section 212(a)(23) were intended to deal with foreign as well as domestic convictions. See Matter of Cardos, 10 I&N Dec. 261 (BIA 1963), aff'd, Cardos v. INS, 324 F.2d 179 (2 Cir. 1963); cf. S. Rep. No. 1515, 81st Cong., 2d Sess. 410 (1950). However, under federal law, in order to be convicted of the crime of possession of marihuana one must have knowledge or intent to possess. 21 U.S.C. 844. The same is true under the law of the District of Columbia, United States v. Weaver, 458 F.2d 825 (D.C. Cir. 1972), as well as the law of the vast majority of states. See Annot., 91 A.L.R. 2d 810, 821 et seq. (1963) and supplements. Therefore, it is fair to state that in enacting section 212(a)(23), Congress did not intend to exclude persons who were entirely unaware that a prohibited substance was in their possession. Cf. Varga v. Rosenberg, 237 F. Supp. 282 (S.D. Cal. 1964); Matter of Sum, 13 I&N Dec. 569 (BIA 1970). Since the respondent has raised a significant question regarding the knowledge requirement of the British statute, we believe that an in-depth discussion of the British law is warranted.

A. Knowledge Requirement of British Statute.

The history of the British laws relating to illegal possession of drugs is quite involved. 5/ The earliest reported decision relating to possession of drugs is R. v. Carpenter, [1960] Crim. L. Rev. 633. In that case, drugs were found in the trunk of a car parked outside a house in which the defendant was arrested. The defense was that he had borrowed the car from a friend some 24 hours earlier and was unaware of the presence of the drugs. The trial court convicted the defendant, but the Court of Criminal Appeal reversed, holding that there was not sufficient evidence of conscious possession of the drug to go to the jury. Since it was conceded by the prosecution at trial that knowledge was a necessary element of the crime, this case does not help greatly in clarifying the legal definition of possession. However, one commentator has noted that "as the law tends to work rather by description than by definition the case is important as an illustration of a fact-situation where a person was held not to be in possession." A. Owen, Dangerous Drugs--Possession, The New Law Journal, September 28, 1972, at 844.

In Lockyer v. Gibb, [1966] 2 All E.R. 653 (Q.B.), the first fully reported case, a bottle containing tablets was discovered in the hold-all which the defendant was carrying. The tablets were found to be a prohibited drug. The defendant admittedly was aware that she was in possession of the bottle and that the bottle contained tablets; however, she claimed that a friend had given the bottle to her to look after and that she did not know what the tablets were. The trial

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5/ There were several predecessors to the Dangerous Drugs Act of 1965. However, since the provisions relating to possession are nearly identical, no distinction between them will be made in the following discussion.

court concluded that she was in unauthorized possession of a prohibited drug, notwithstanding the fact that she might not have known that the tablets she had were such a prohibited drug. The defendant was given leave to appeal her conviction.

On appeal, the Queen's Bench Division sustained the conviction, holding that while it was necessary for the prosecution to show that the defendant knew that she had the articles which turned out to be a drug, it was not necessary that she should know in fact that the articles were a drug and a drug of a particular character. In the course of his opinion, Lord Parker rendered the following notable dictum:

> In my judgment, before one comes to a consideration of a necessity for mens rea or, as it is sometimes said, a consideration of whether the regulation imposed an absolute liability, it is of course necessary to consider possession itself. In my judgment, it is quite clear that a person cannot be said to be in possession of some article which he or she does not realise is, or may be, in her handbag, in her room, or in some other place over which she has control. That, I should have thought, is elementary; if something were tipped into one's basket and one had not the vaguest notion it was there at all, one could not possibly be said to be in possession of it. 6/

Lord Parker also referred to the Canadian case of Beaver v. R., [1957] S.C.R. 531, in which the majority of the Supreme Court of Canada concluded under a similar statute that one who has physical possession of a package which he believes to contain a harmless substance,

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6/ [1966] 2 All E.R. at 655.

but which in fact contains a narcotic drug, cannot be convicted of being in possession of the drug. Lord Parker expressed disagreement with this view and agreed instead with the dissenting justices in Beaver.

In R. v. Smith, [1966] Crim. L. Rev. 558, the defendant was convicted of possessing a drug found in a room at a house where she was living. The trial judge had instructed the jury that it was necessary for the prosecution to show that the defendant lived in the room and "had a common interest in it so that she controlled all the things that were in it of any significance." The conviction was quashed by the Court of Criminal Appeal, which held that the jury should have been directed to decide whether the defendant knew of the drug and if so whether she had possession or control of it.

In the case of Dales, [1967] Crim. L. Rev. 125, the defendant appealed from a conviction for possession of cannabis and the imposition of a three-year sentence. He claimed a belief that the substance he possessed was an Indian culinary herb rather than a dangerous drug. The Court of Criminal Appeal accepted the idea that for the sentence to have a rational foundation there must be convincing evidence that the defendant knew he was carrying cannabis rather than curry powder. The court concluded, however, that the evidence fully justified the trial judge's rejection of the defendant's explanation of innocence and also justified the imposition of the severe sentence.

The House of Lords considered for the first time the type of knowledge required for conviction of the statutory offense of drug possession in Warner v. Metropolitan Police Commissioner, [1968] 2 All E.R. 356 (H.L.). In that case, the defendant's van was stopped by police and two parcels were found, one containing bottles of perfume and the other containing 20,000 amphetamine sulphate

tablets. The defendant claimed that he sold perfume as a sideline and that he believed both packages, which had been left for him at a cafe, contained perfume. The jury was instructed that the defendant was guilty if he had control of the box which in fact turned out to be full of amphetamines, and that his claim of lack of knowledge was to be considered only in mitigation of sentence. Both the trial judge and the jury expressed the opinion that the defendant knew that the parcel contained the drugs, although this finding was not necessary for conviction. The defendant was convicted and the Court of Appeal affirmed. R. v. Warner, [1967] 3 All E.R. 93 (C.A.).

On appeal to the House of Lords, there were only two points on which the five justices could agree: (1) that as per Lord Parker's dictum in Lockyer, a person does not possess something which is slipped into his control entirely without his knowledge, and (2) that the appeal in Warner should be dismissed. As to the mental element necessary to convict a man of possession, the individual justices took diverse approaches.

Lord Guest felt that the prosecution must show that the accused had knowledge that he possessed the package or bottle which contained the drugs. According to this view, a person shown to be in possession of a package will be deemed to also possess its contents. 7/

Lord Morris expressed the opinion that a person possesses the contents of a container when he is knowingly in control of that container in circumstances in which he had the opportunity, whether availed of or not, to discover the contents. 8/

7/ [1968] 2 All E.R. at 384-85.

8/ Id., at 375.

On the other hand, Lord Pearce and Lord Wilberforce both thought that a person could not be said to be in possession of the contents of a package if he was entirely unaware of those contents. These two justices concluded that proof that a person knowingly possessed a package raised a strong inference that he also knew the contents; however, the defendant should be allowed to assert in his defense that he had no knowledge of, or was genuinely mistaken as to, the actual contents or their illicit nature, and received them innocently, and that he had no reasonable opportunity since acquiring the package to acquaint himself with its contents. 9/

Finally, Lord Reid took the view that the statute required the prosecution to prove facts from which the jury could infer that the defendant knew that he had a prohibited drug in his possession. 10/ Lord Reid also

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9/ Id., at 388-90, 393-94. Lord Pearce further stated that "the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse." Id., at 388. The introduction of this somewhat metaphysical distinction between "kind" and "qualities" was the subject of criticism by commentators. See e.g. D. Miers, The Mental Element In Drug Offences, 20 Nor. Ir.L.Q. 370, 380 (1969); A. Owen, Dangerous Drugs--Possession, The New Law Journal, September 28, 1972, at 844, 845. However, it should be noted that Lord Pearce felt the question of whether a difference in qualities amounts to a difference in kind "is a matter for a jury who would probably decide it sensibly in favour of the genuinely innocent but against the guilty." [1968] 2 All E.R. at 388.

10/ Id., at 367.

suggested that: "In a case like this Parliament, if consulted, might think it right to transfer the onus of proof so that an accused would have to prove that he neither knew nor had any reason to suspect that he had the prohibited drug in his possession. . . ." 11/ Lord Pearce put forth a similar suggestion. 12/

With the exception of Lord Guest, the justices expressed the opinion that the direction to the jury given by the trial court had been defective. 13/ Nevertheless, Lords Reid, Pearce, and Wilberforce believed that the defendant's story regarding lack of knowledge was so preposterous that no reasonable jury could have acquitted him, and that therefore no injustice had been done. 14/

From the foregoing discussion, it is evident that a majority of the court, consisting of Lords Reid, Pearce, and Wilberforce, believed that there was a substantial knowledge requirement for conviction of possession of a

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11/ Id., at 367.

12/ "It would, I think, be an improvement of a difficult position if Parliament were to enact that when a person has ownership or physical possession of drugs he shall be guilty unless he proves on a balance of the probabilities that he was unaware of their nature or had reasonable excuse for their possession. . . ." Id., at 390.

13/ Id., at 370, 375, 391, 395.

14/ Id., at 370, 391, 395. See Section 4, Criminal Appeal Act of 1966. Lord Morris took the view that although the jury instruction was faulty, the admitted facts brought the defendant within his definition of possession, thereby justifying dismissal of the appeal. [1968] 2 All E.R. at 375.

dangerous drug. The inference that possession of a package meant possession of its contents could be rebutted by the defendant if he raised substantial doubt that he knew the contents; this could be done either by showing that he had no right to open the package and no reason to suspect its contents to be illicit, or by showing that he was genuinely mistaken as to the contents and had no reasonable opportunity to ascertain what they were. See D. Miers, The Mental Element In Drug Offences, 20 Nor. Ir.L.Q. 370, 389-90 (1969). The majority view in Warner, then, was the prevailing interpretation at the time of the respondent's conviction in 1968.

The cases which were decided after Warner confirm the existence of a substantial knowledge requirement for conviction of possession. In R. v. Marriott, [1971] 1 All E.R. 595 (C.A.), the defendant possessed a penknife with some traces of cannabis on the blade. On appeal from the defendant's conviction, the Court of Appeal held that, in order to establish unlawful possession of cannabis, the prosecution had to show that the defendant knew or had reason to know that a foreign substance was on the knife. The court noted that nothing said in Warner negated the necessity for such proof of knowledge. The conviction was quashed.

In R. v. Irving, [1970] Crim. L. Rev. 642, the defendant had a bottle in his possession which contained his stomach pills along with some amphetamines, the latter being a prohibited drug. He defended on the ground that the amphetamines had been prescribed for his wife, and that she must have put them in his bottle by mistake; consequently, he claimed, he had no knowledge that the amphetamines were there. The trial judge directed that if the defendant knowingly possessed the bottle he also possessed the contents, and the jury returned a guilty verdict. The Court of Appeal sustained the appeal, stating that the jury direction was wrong because the circumstances were comparable to those where a drug was slipped into a person's pocket or bag without his knowledge.

In R. v. Fernandez, [1970] Crim. L. Rev. 277, the defendant was convicted of possession of cannabis. The facts adduced at trial showed that the respondent had reason to believe that the package he was carrying contained a prohibited substance. The trial judge directed that "if the person were to receive the package under circumstances whereby it would be clear to any person of ordinary common sense that it might well contain either drugs or some other article which ought not to be in distribution the mere fact that it could not be shown that the carrier knew the exact contents would not prevent him from being guilty . . . the mere fact that the prosecution cannot show that he knew the exact nature of the drug would not matter if he did know that the package might well contain some prohibited article and if in fact it did contain a prohibited drug." On appeal it was held that, on the facts of the case, the direction was adequate. The Court of Appeal observed that: "The majority view in Warner was that one could not safely regard the offence as absolute: some mental element, or subjective test, might have to be applied."

In Sweet v. Parsley, [1969] 1 All E.R. 347 (H.L.), the House of Lords considered the question of whether a landlord who had no knowledge that cannabis was being smoked on his premises could be convicted for being concerned in the management of premises used for the smoking of cannabis under section 5(b) of the Dangerous Drugs Act of 1965. The court's holding that the conviction should be quashed hinged on the wording of section 5(b) and prior enactments. However, in the course of the opinion all of the justices agreed that knowledge is normally a requirement for conviction and that such requirement should not be lightly dispensed with. More important for the present case, several justices commented as to what they thought Warner held in regard to the mental element required for conviction of possession.

Lord Reid stated that he had no reason to alter the view which he expressed in Warner, that knowledge is an element of the crime. 15/ Lord Pearce, Lord Wilberforce, and Lord Diplock all expressed the view that the term "possession" as used in Warner imported a mental element. 16/

One commentator has stated that prior to the enactment of the Misuse of Drugs Act of 1971, the mental element required for conviction for drug possession consisted of two stages:

> First, it had to be proved that an accused knew that he had actual or constructive possession of the article which contained the drugs. Secondly, although it could not be proved that the accused knew the exact nature of what he had, it had to be proved that there were facts from which it could be inferred that he knew he had a substance of an illicit nature, though not necessarily what kind of illicit substance it was. I. McClean & P. Morrish, Harris's Criminal Law 269 (22d ed. 1973). 17/

15/ [1969] 1 All E.R. at 349.

16/ Id., at 358, 360, 361.

17/ The Misuse of Drugs Act of 1971 attempted to clarify the law pertaining to possession of dangerous drugs. The Dangerous Drugs Act of 1965, under which the respondent was convicted, was repealed. Section 28(3)(b) of the new Act specifically provided that a defendant shall be acquitted of various drug offenses, including possession:

> (i) if he proves that he neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug; or

(cont'd)

We conclude that the statute under which the respondent was convicted contained a sufficient knowledge requirement to ensure that persons whose possession was

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> (ii) if he proves that he believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.

By the enactment of this section, Parliament appears to have been taking the course suggested by Lord Reid and Lord Pearce in Warner, and thereby placing the burden on the defendant who has been shown to be in the physical control to prove that his possession was innocent.

There are several statements in the legislative history of the Misuse of Drugs Act of 1971 which indicate that at least one member of Parliament believed that as a result of Warner the crime of possession under the Dangerous Drugs Act of 1965 was "absolute" and did not require any mens rea. 808 Parl. Deb., H.C. (5th ser.) 617-18 (1970). This view ignores the fact that there was a substantial knowledge requirement before one could even be said to be in "possession" of a drug. To say that possession is an "absolute" offense begs the question. The term "absolute" is very imprecise. As was pointed out by Lord Pearce in Sweet v. Parsley, [1969] 1 All E.R. 347, 358 (H.L.), the term "absolute" may describe "an offence to which the normal assumption of mens rea does not apply, but in which the actual words of the offence (without any additional implication of mens rea) may well import some degree of knowledge, e.g., the word

(cont'd)

entirely innocent would not be convicted. In this respect, cases such as Irving, Marriott, Smith, and Carpenter establish that persons asserting plausible defenses based on lack of knowledge were not convicted. On the other hand, in cases such as Warner, Lockyer, Fernandez, and Dalas, where the defenses advanced were quite incredible, the courts sustained the convictions.

It is true that some of the formulations of the knowledge requirement in the British cases seem obtuse. It has been suggested that this may be due, in part, to judicial overreaction to the fear that juries would abuse a liberal formulation of the knowledge requirement and be too eager to allow drug peddlers to escape for lack of proof of knowledge. D. Miers, The Mental Element In Drug Offences, 20 Nor. Ir.L.Q. 370, 376-77, 383 (1969). See the commentary on the Dalas case in [1967] Crim. L. Rev. 125. This fear may have been misplaced; however, we do not believe that the Dangerous Drugs Act of 1965 created an offense which permitted the conviction of persons whose possession was innocent and readily explainable.

Conviction for possession of cannabis resin under the Dangerous Drugs Act of 1965 required that the defendant have had knowledge that he possessed an illicit substance which proved to be cannabis resin. A person who was entirely unaware that he possessed any illicit substance would not have been convicted under the Dangerous Drugs Act of 1965. The respondent's plea of guilty to the charge of possession of cannabis resin under the Dangerous Drugs Act of 1965 is a conviction

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'possession' as in Warner's case." We believe that the cases, not the Parliamentary Debates, are the most accurate source of information as to the state of English law at the time of the respondent's conviction.

of a law relating to the illicit possession of marihuana within the meaning of section 212(a)(23) of the Immigration and Nationality Act.

Furthermore, counsel's intimation that the respondent pleaded guilty on the advice of British counsel that British law did not permit a defense of lack of knowledge is not reflected in the record. In a letter dated March 14, 1972, British counsel retained by the respondent at the time of his conviction stated that he believed the respondent had a good defense on the facts of the case. 18/ However, the respondent allegedly expressed a concern for the welfare of his wife, who was then pregnant and suffering physical and emotional difficulties, if she were called upon to testify. British counsel stated that he "was obliged to explain to him [the respondent] that the only course open that would obviate the need for her [his wife's] appearance would be for him to plead guilty." The letter implies that the respondent pleaded guilty to obviate the necessity for his wife's appearance as a witness. British counsel does not state that his advice to the respondent, or the respondent's decision to plead guilty, had anything to do with the unavailability of a defense based on lack of knowledge under the British statute.

The respondent had an opportunity to obtain advice of competent counsel and to fully litigate all possible defenses. He chose instead to take a calculated risk by pleading guilty to the charge. Deportation proceedings are not a forum for redetermining the question of guilt, which has already been established by the respondent's plea. See Rassano v. INS, 377 F.2d 971, 974 (7 Cir. 1966), vacated and remanded on other grounds 377 F.2d 975

18/ A copy of this letter is appended to the respondent's motion to terminate dated March 24, 1972.

(7 Cir. 1967); Giammario v. Hurney, 311 F.2d 285, 287 (3 Cir. 1962); Matter of Gutierrez, Interim Decision 2234 (BIA 1973). Although counsel indicated at oral argument that a challenge to the British conviction was being contemplated, we have received no information that such a challenge has actually been undertaken (Transcript of oral argument, pp. 45-6).

B. Is Cannabis Resin Marihuana Within the Meaning of Section 212(a)(23)?

The respondent asserts that the term "marihuana" as used in section 212(a)(23) does not include cannabis resin. Counsel introduced expert testimony by Lester Grinspoon, M.D., and a book written by Dr. Grinspoon, to show that cannabis resin is not marihuana (Transcript of hearing, pp. 35-43; Ex. 13).

According to Dr. Grinspoon, there are three grades of intoxicating drug which are prepared in India from the plant Cannabis sativa (L.), and which serve as standards against which preparations produced in other parts of the world are compared for potency. Bhang consists of Cannabis sativa leaves dried and then crushed into a coarse powder and perhaps mixed with seeds and chopped up stems of the plant. Ganja, the second strongest preparation, is made from the tops of cultivated female plants and is estimated as being two or three times as strong as bhang. Pure resin of the pistillate flowers is called charras and is the most potent of the intoxicants, being five to eight times more potent than bhang. Charras, or cannabis resin, is called hashish in some places.

Dr. Grinspoon has stated that the chemical compounds responsible for the intoxicating effect of cannabis are commonly found in the resin. Although it is generally believed that the plant's active agents are found solely

in the resin, there is insufficient evidence to support this hypothesis. It is possible that other parts of the female and male plants may contain active substances.

The gist of Dr. Grinspoon's testimony is that, as used in the United States, the term "marihuana" refers only to a preparation comparable to Indian bhang, and should be distinguished from cannabis resin which is comparable to Indian charras (or hashish) (Transcript of hearing, p. 37). While this argument has some technical appeal, we are not persuaded by it.

The term "marihuana" is not defined in the Act, nor is the legislative history explicit as to the meaning to be given to the term. In the absence of explicit legislative guidance, we must strive to interpret the Act in a manner consistent with the congressional purpose.

The provisions for the exclusion and deportation of persons convicted of possession of marihuana were part of a congressional scheme to deal with the evils of drug abuse. S. Rep. No. 1651, 86th Cong., 2d Sess., U.S. Code Cong. & Ad. News 3134-35 (1960). In other statutes having the same objective, Congress has treated the term "marihuana" as including cannabis resin. 21 U.S.C. 802(15); Act of August 16, 1954, ch. 736, 68A Stat. 565; Act of July 18, 1956, ch. 629, §106, 70 Stat. 570; see United States v. Piercefield, 437 F.2d 1188 (5 Cir. 1971), cert. denied, 403 U.S. 933 (1971); United States v. Cepelis, 426 F.2d 134 (9 Cir. 1970), cert. denied, 404 U.S. 846 (1971). In the absence of express congressional direction to the contrary, we shall not create a distinction between cannabis resin and marihuana under the Immigration and Nationality Act.

Several federal courts have noted that hashish (cannabis resin) is merely a refined form of marihuana. United States v. Piercefield, supra; see United States

v. Cepelis, supra. It would be illogical to construe the term "marihuana" under section 212(a)(23) as including the cannabis leaves (possibly mixed with stems and seeds) which contain intoxicating cannabis resin, while not including the pure form of the resin which has a much greater intoxicating effect. While it is true that ambiguous provisions of the immigration laws are often construed in favor of the alien, this general maxim does not require us to ignore common sense and legislative objectives in order to reach a construction favoring the alien. Cf. Chanan Din Khan v. Barber, 253 F.2d 547, 550 (9 Cir. 1958), cert. denied, 357 U.S. 920 (1958).

Matter of Paulus, 11 I&N Dec. 274 (BIA 1965), is distinguishable. That case involved a factual issue concerning the identity of the drug that the alien was convicted of trafficking in. The record of conviction referred only to a "narcotic drug" under California law, which included substances not defined as "narcotic drugs" under the immigration laws as interpreted by the federal courts. Since the conviction was alleged to be the ground for deportation under section 241(a)(11), we held that the factual uncertainty as to what drug was involved had to be resolved against the Service, the party bearing the burden of proving deportability.

In the present case, however, there is no factual dispute as to what drug the respondent was convicted of possessing. The issue is a legal one: Is cannabis resin "marihuana" within the meaning of section 212 (a)(23)? We have resolved this legal issue against the respondent.

Counsel has cited Matter of Gray, A30 310 271 (IJ September 23, 1971), an unpublished decision by an immigration judge, which held that hashish is not "marihuana" within the meaning of section 212(a)(23) of the Act. The Service took an appeal from that decision, but the appeal was later withdrawn. Such withdrawal, however, does not

indicate Service acquiesence to that decision. Cf. Matter of Mangabat, Interim Decision 2131 (BIA 1972), aff'd on other grounds Cabuco-Flores v. INS, 477 F.2d 108 (9 Cir. 1973). Our decisions are binding precedent on the immigration judges, rather than vice versa. 8 C.F.R. 3.1(g). The short answer to counsel's use of Gray is that we disagree with that decision and decline to adopt its reasoning in the present case.

In his brief, counsel attacks the constitutionality of section 212(a)(23). 19/ As he concedes, however, we have no power to consider a constitutional challenge to the statutes which we administer. Matter of Santana, 13 I&N Dec. 362, 365 (BIA 1969); Matter of Wong, 13 I&N Dec. 820, 823 n. 2 (BIA 1971); Matter of L-, 4 I&N Dec. 556, 557 (BIA 1951).

We are not unsympathetic to the plight of the respondent and others in a similar situation under the immigration laws, who have committed only one marihuana violation for which a fine was imposed. Nevertheless, arguments for a change in the law must be addressed to the legislative, rather than the executive, branch of government.

IV. SUMMARY AND CONCLUSION

We have concluded that the respondent's motion to defer our decision must be denied. We have also concluded that the respondent is deportable under section

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19/ We have also considered the amicus curiae brief submitted in behalf of the respondent by the American Civil Liberties Union. A large portion of that brief is devoted to arguments concerning the constitutionality of section 212(a)(23). We believe that the other issues raised in the amicus brief have been dealt with adequately in the course of our opinion and need not be reiterated.

241(a)(2) of the Act, and that he is statutorily ineligible for adjustment of status under section 245 of the Act. The respondent is not eligible for any relief from deportation except voluntary departure, which has been granted to him by the immigration judge. The immigration judge reached the correct result; the appeal will therefore be dismissed.

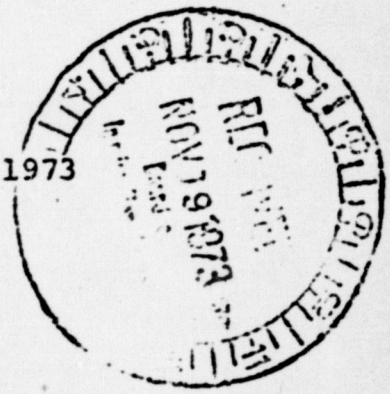
ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 60 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 3-3168
CABLE ADDRESS
"LEONWILDES" N.Y.

November 16, 1973



Board of Immigration Appeals
U.S. Department of Justice
521 12th Street, N.W.
Washington, D.C. 20530
Attention: Mr. Maurice Roberts, Chairman

Re: LENNON, John Winston Ono
A17 597 321

Dear Sir:

I wish to thank the Board for the courtesies extended to me in connection with the presentation of my oral application before the full Board on October 31st.

In keeping with the undertaking of counsel for both the government and the respondent to apprise the Board of Immigration Appeals of developments, I wish to inform the Board of the fact that service of process has been completed in both lawsuits pending before the U.S. District Court for the Southern District of New York. Moreover, I am advised (see copy of cablegram attached) that the trial of Detective Sergeant Pilcher and the other officers who participated in the arrest of the respondent in England in 1968 has been concluded, and that Officer Pilcher was convicted and apparently sentenced to four years imprisonment. I am instructing British counsel to study the proceedings which have transpired to determine whether they may now form the foundation for a proceeding to reopen respondent's conviction in London.

I will keep the Board apprised of any such developments.

It is my understanding that the Board will reach a determination with respect to my application that its deliberations be deferred and that I will be informed of the ruling separately and in advance

of any determination on the merits.

Very truly yours,

LEON WILDES

LW/ts
Encl.
cc: Vincent A. Schiano, Esq., Chief Trial Attorney, New York District
cc: Irving Appleman, Esq., Appellate Trial Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x CIVIL ACTION FILE NO.

JOHN WINSTON ONO LENNON,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA; ROBERT H. BORK, as Acting Attorney General of the United States; RICHARD KLIENDIENST, Individually and as former Attorney General of the United States; JOHN A. MITCHELL, Individually and as Former Attorney General of the United States; RAYMOND FARRELL, Individually, and as Former Commissioner of Immigration and Naturalization; LEONARD CHAPMAN, Individually, and as Commissioner of Immigration and Naturalization; SOL MARKS, Individually, and as District Director, New York, Immigration and Naturalization; the IMMIGRATION AND NATURALIZATION SERVICE; and PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT,

Defendants.

----------x

COMPLAINT

INTRODUCTION

1. The within action is brought by plaintiff, JOHN WINSTON ONO LENNON, for a mandatory injunction and other relief. The causes of action arise out of the unlawful electronic surveillance of the plaintiff, the violation of various rights, privileges and immunities guaranteed this plaintiff by the First, Fourth, Fifth and Ninth Amendments to the Constitution of the United States, and the unwarranted and illegal institution of deportation proceedings against

the plaintiff, commenced and maintained against him by the defendants herein.

JURISDICTION

2. The jurisdiction of this Court rests on Title 28, U.S.C. §1331, granting to the court "original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of ten thousand dollars ($10,000.00) exclusive of interests and costs, and arises under the Constitution, laws, or treaties of the United States." This case arises under the Constitution of the United States and other laws of the United States. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

3. Jurisdiction of the court further rests on Title 28, U.S.C. §1361, granting to this court "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

4. The jurisdiction of this court further rests on Title 28, U.S.C. §1343(c), on the Constitution and laws of the United States and more particularly, Title 18, U.S.C. §3504, Title 8, U.S.C. §§1101 et seq., the First, Fourth, Fifth, and Ninth Amendments to the Constitution of the United States.

PARTIES

5. Plaintiff JOHN WINSTON ONO LENNON is a native and citizen of England, lawfully admitted to the United States as a non-immigrant visitor for pleasure in August, 1971, is of full age, and is presently a resident of the

City, County and State of New York.

6. The defendant UNITED STATES OF AMERICA is made herein a party-defendant, as and for the entire Federal Government of the United States of America.

7. The defendant, RICHARD KLIENDIENST, is a citizen of the United States, and on information and belief, a resident of Washington, D.C., and is sued herein both individually and in his capacity as the former Attorney General of the United States whose acts and conduct both individually and in this then official capacity were responsible for some or all of the unlawful acts hereinafter complainted of.

8. The defendant, JOHN A MITCHELL, is a citizen of the United States and on information and belief, is a resident of the City, County and State of New York; he is sued individually and in the capacity as the former Attorney General of the United States whose acts and conduct both individually and in his official capacity were responsible for some or all of the unlawful acts hereinafter complainted of.

9. The defendant, RAYMOND FARRELL, is a citizen of the United States and on information and belief, is a resident of Washington, D.C.; he is sued individually and in the capacity as the former Commissioner of Immigration and Naturalization whose acts and conduct both individually and in his official capacity were responsible for some or all of the unlawful acts hereinafter complained of.

10. The defendant LEONARD CHAPMAN is a citizen of the United States and on information and belief a resident of Washington, D.C.; he is sued individually and in his capacity as the Commissioner of Immigration and Naturalization whose acts and conduct both individually and in his official capacity were responsible for some or all of the unlawful acts hereinafter complained of.

11. The defendant SOL MARKS is a citizen of the United States, and has offices in the City, State and County of New York; he is sued individually and in his capacity as District Director, New York, of the Immigration and Naturalization Service, whose acts and conduct both individually and in his official capacity were responsible for some or all of the unlawful acts hereinafter complained of.

12. Defendant IMMIGRATION AND NATURALIZATION SERVICE is a federal governmental agency, with its Central Office located in WAshington, D.C., and its District Office relevant to the facts of this complaint located in both the City, County and State of New York and in Washington, D.C.

13. The defendant PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT is named a party defendant herein to include all persons in the employ of, directly or indirectly, the defendant UNITED STATES OF AMERICA and any and all federal governmental agencies, who are presently unnamed but whose acts and conduct, both individually and in their official capacity, were responsible for some or all of the unlawful acts hereinafter complained of.

AS AND FOR A FIRST CAUSE OF ACTION, PLAINTIFF ALLEGES :

14. On or about the first day of March, 1972, plaintiff LENNON was granted until March 15, 1972 to remain in the United States by defendants MARKS and SERVICE; on March 6, 1972 and again on March 7, 1972, defendant MARKS, without legal foundation or explanation, revoked plaintiff's authorization to remain in the United States until March 15, 1972, and at the same time commenced deportation proceedings against the plaintiff on the grounds that plaintiff had overstayed his authorized time in the United States and on the additional ground that the plaintiff had violated the provisions of his permitted stay in the United States, which

violation was directly caused by the retroactive revocation of plaintiff's authorized time to remain by defendant MARKS.

15. After a hearing, an order was entered by an Immigration Judge which granted the plaintiff voluntary departure in lieu of deportation, but, which ordered deportation in the event that the plaintiff failed to voluntarily depart from the United States within a prescribed period of time; the said order was based upon the alleged overstaying by the plaintiff of his authorized time in the United States; no violation of the provisions of his permitted stay were found.

16. The order of the Immigration Judge is now on appeal and is presently before the Board of Immigration Appeals.

17. On or about August 1, 1973, plaintiff, by his attorney, moved before the Immigration Judge for an order compelling the United States Government to affirm or deny the occurrence of certain unlawful acts, namely: the illegal use of any electronic, mechanical, or other recording device, wiretap, mail cover, surveillance or other improper investigatory device, which motion was made pursuant to the provisions of Title 18, U.S.C. §3504. A copy of said motion is attached hereto as Exhibit "A", and made a part hereof.

18. In addition, the plaintiff, by his attorney, requested that the defendant SERVICE, by its Chief Trial Attorney assigned to prosecute the deportation hearing against plaintiff, either affirm or deny the occurrence of the unlawful acts alleged and described in paragraph numbered 17, supra.

19. Said defendant and its Chief Trial Attorney, Vincent A. Schiano, have failed and refused to affirm or deny the occurrence of the unlawful acts alleged and described, supra.

20. The Immigration Judge has declined to order the government to comply with the provision of Title 18, U.S.C. §3504, and imposed upon plaintiff, by letter dated September 12, 1973, additional requirements before he would in fact hear said motion. [See Exhibit "B" attached hereto.]

21. In reply to said requests by the Immigration Judge, plaintiff, by his attorney, complied with said requests on September 20, 1973, and thereby made a further demand for the relief requested. [See Exhibit "C" attached hereto.]

22. The Immigration Judge has failed to take further action with regard to plaintiff's motion, and to date there has been neither an affirmance nor a denial of the occurrence of the unlawful acts alleged and described, supra.

23. Plaintiff complains that the unprecedented revocation of his authorized stay as a visitor placing him in illegal status as an overstay, and the simultaneous institution and maintenance of deportation proceedings against him, and all of the evidence adduced therein, were either the primary product of the unlawful acts alleged above or were obtained by the exploitation of such unlawful acts.

24. The Immigration Judge before whom the deportation matter was originally heard has declined to grant the relief herein requested.

25. The Board of Immigration Appeals, before whom the deportation proceeding is now pending on appeal, has no jurisdiction to order the relief prayed for herein, in that

the jurisdiction of said Board in deportation cases is limited to Appellate review based upon the agency record file and the Board does not conduct trials or evidentiary hearings.

26. There is no administrative or judicial body other than this Court before whom the issues of unlawful surveillance and the refusal of the defendants to affirm or deny the existence of an illegal act or acts can be raised.

27. The plaintiff herein will suffer irreparable harm by the continued prosecution of a deportation proceeding tainted by illegally-obtained evidence; moreover, should the Board of Immigration Appeals be permitted to hear and determine the appeal in the deportation matter now before it without having included in the record on appeal the evidence of unlawful government activity which tainted the entire administrative proceedings, plaintiff will suffer irreparable harm.

28. Plaintiff would be unable to secure the relief requested herein stated or raise the threshhold issue stated herein before the Second Circuit Court of Appeals should the matter reach said Court by direct appeal of an adverse decision by the Board of Immigration Appeals under Title 8, U.S.C. §1105(a), in the absence of said issue having been considered by the Board.

29. Plaintiff has exhausted whatever administrative remedies exist.

30. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE
OF ACTION, PLAINTIFF ALLEGES:

31. Plaintiff repeats and realleges with the same force and effect as if repeated in full herein, paragraphs of this complaint numbered "L" through "30", inclusive.

32. Pursuant to Title 8, U.S.C. §§1153, 1154, defendants jointly or severally owed a duty to the plaintiff to rule and to exercise its discretion as to whether or not to designate plaintiff, upon a third-preference application filed by plaintiff, [illegible]as an alien who, because of his exceptional ability in the arts would substantially benefit prospectively the national economy, cultural interests or welfare of the United States.

33. On or about May 1, 1972, plaintiff moved in the United States District Court, Southern District of New York (Lennon end ano. v. Marks et al., Civil Action File No. 72 C 1784) for injunctive relief to compel the defendants herein to exercise discretionary relief, which until said time, the defendants had totally failed to do.

34. On or about May 9, 1972, defendants, in a settlement of the above-described action, exercised the discretionary relief herein described and ruled upon the application in favor of the plaintiff, but not until defendants were urged to so do by an Assistant United States Attorney and only after the District Court (Lasker, J.) had entered a temporary restraining order enjoining the deportation proceedings pending a hearing on the issue.

35. During the course of the deportation hearing, and thereafter, plaintiff, by his attorney, has applied for various forms of discretionary relief, all of which have been denied.

36. The defendants, through defendant MARKS and the Immigration Judge, have the discretionary power to terminate the within deportation proceedings and, upon information and belief, have additional discretionary power to classify plaintiff's status as one entitled "non-priority," or one in which deportation proceedings will be indefinitely delayed or deferred for humanitarian or other reasons.

37. Defendants have refused to provide to plaintiff or his attorney the standards and cireteria and other information as to its action in cases similar to the plaintiff as to which cases are or should be calssified "non-priority" pursuant to the powers alleged in paragraph "36" herein, and such refusal is the subject of another action between the same or similar parties as are concerned herein, entitled John Lennon v. Richardson et al, Civil Action File No. 73 C 4476.

38. As to the exercise of discretion with respect to classifying plaintiff as a non-priority case, therefore, upon information and belief, defendants jointly and severally have failed to exercise such power with respect to the plaintiff herein.

39. As to the exercise of all other discretionary relief with respect to plaintiff, upon information and belief, defendants have failed to exercise such powers with respect to plaintiff, or, in the alternative, have routinely denied all such discretionary relief in a course of conduct which violates plaintiff's rights and privileges under the Constitution of the United States, as more fully appears in the allegations, infra, in this complaint.

40. The following discretionary relief has been requested by plaintiff, by his attorney, and has been denied routinely, or, in the alternative, not acted upon, by the defendants, either jointly or severally, although this is not intended to be an all-inclusive listing: request to discontinue institution of deportation proceedings against plaintiff's wife, Yoko Ono Lennon, which proceedings were eventually terminated in favorable action by the Immigration Judge; failure by defendants to consult with the District Director of Washington, D.C. as to all applications for extensions of time, as required by plaintiff's waiver; refusal to terminate deportation proceedings maintained against the plaintiff; the denial of the discretionary relief of granting the plaintiff permanent resident status; the revocation of status which was bona fide, creating overstay status, and the then institution of deportation proceedings based on overstay, which status was created retroactively by the defendants; the refusal, in advance, to entertain any and all extension applications; the failure to adjudicate third preference petitions until the proceedings were temporarily restrained through judicial intervention; the unprecedented institution of deportation proceedings in a case fraught with serious humanitarian considerations following the extraordinary and precipitous procedure of retroactive termination of voluntary departure time; the denial of plaintiff's due process right to prepare and present an available defense to the deportation proceedings through the failure to furnish information to which he is entitled under the Freedom of Information Act; the denial of plaintiff's request to depose knowledgeable government officials as to the practice of the Service in other similar cases; and numerous other acts on the part of the government.

41. The discretionary powers described above are vested in the Immigration Judge and the District Director and in other officials of the defendant SERVICE by statute and/or regulations, and the authority is granted to said officials to exercise their discretionary power according to their own understanding and conscience, except with respect to the exercise of discretionary extensions of stay which were expressly conditioned upon the concurrence of the District Director of the Washington, D.C. District.

42. The action taken by some officials of defendant SERVICE demonstrates that the hearing officer's decisions and the decisions of the District Director were based on information outside of the record before such officials and demonstrated that said officials, including the District Director, defendant MARKS, and the Immigration Judge, failed to exercise their own understanding and conscience, and that in effect such "discretion" was pre-determined and pre-judged, as appears more fully, infra.

43, Upon information and belief, a memorandum issued from the Superviser, Intelligence Division, Unit 2 of an unknown Federal Government agency, which advised that the plaintiff had intentions of remaining in the United States and was seeking permanent residence therein; that permitting such residence was judged "inadvisable" and that it "was recommended that all applications are to be denied"; that the association of the plaihtiff with various citizens of the United States was "judged to be highly political and unfavorable to the present administration"; that said matters hdd been discussed in earlier reports and communications, and that because of these factors and the contro-

versial behavior of the plaintiff, the plaintiff was to be judged as both an "undesireable and dangerous" alien; and that because of the "delicate and explosive nature of this matter the whole affair had been handed over to the Immigration and Naturalization Service" to "handle." [See Exhibit "D" attached hereto.]

44. The within memorandum, described heretofore and attached hereto as Exhibit "D", was, upon information and belief, circulated to certain officers and administrators within the defendant SERVICE, either directly or indirectly.

45. The denial of all discretionary relief was, upon information and belief, either based upon the memorandum described and attached hereto as Exhibit "D" or by persons involved in issuing said memorandum, or by other unknown persons within the government, who instructed officials in the Immigration and Naturalization Service to deny all discretionary relief.

46. Upon information and belief, the officials within the defendant SERVICE were made aware of and had knowledge of the fact that various officials of the United States Government wanted the plaintiff to be deported or removed, and that all discretionary relief applied for by the palintiff was to be denied, not by Immigration officials acting under the statutory power conferred upon them to grant or deny discretionary relief according to their own understanding and conscience, but because of other factors which were not made a part of the record during the deportation proceedings and which are, in part, described within this complaint.

47. Attempts have been made to request the relief herein sought from various of the defendants, but to no avail.

48. The above views of the unkown Federal Government authorities were known to officials within the defendant SERVICE prior to the denial of all administrative discretionary relief, and that the intention of the Federal Government or its officials to have such discretionary relief denied was, upon information and belief, made clear to all officials within the defendant SERVICE who were required to know of same because of their direct concern with the deportation proceedings involving the plaintiff herein.

49. Because of the various facts stated above, the District Director, defendant MARKS, and the hearing officer (Immigration Judge) have, upon information and belief, failed to exercise their own individual judgment in ruling upon such discretionary applications.

50. As a result of the facts stated above and the ensuing deportation proceedings, plaintiff was precluded from seeking one of a number of the other legal non-immigrant statuses in which he might have remained in the United States legally to conduct his personal and professional business; that he was by virtue of the institution of deportation proceedings, relegated to a remedy of applying for permanent residance status only, likewise a discretionary application; that the plaintiff's deportation proceeding was prejudged and the Immigration Judge and defendant MARKS were not permitted to and did not exercise the above-described discretion which rested in them by statute and/or regulation.

51. As a further result of the aforesaid prejudgement, the plaintiff did not receive a full and fair hearing as to his applications for discretionry relief, and plaintiff's rights and privileges under the Fifth Amendment to the United States Constitution, and more particularly to the due-process guaranty contained therein, were consequently violated.

52. That the deportation order which thus issued by the Immigration Judge in said proceeding should therefore be declared null and void because it is violative of plaintiff's due process rights and privileges, guaranteed to him by the Constitution of the United States, and more particularly by the Fifth Amendment thereto.

AS AND FOR A THIRD CAUSE OF ACTION, PLAINTIFF ALLEGES:

53. Plaintiff realleges and repeats, with the same force and effect as if re-asserted herein, paragraphs of this complaint numbered "1" through "52", inclusive.

54. Plaintiff is entitled to the protection of the rights guaranteed to him by the First, Fourth, Fifth, and Ninth Amendments to the United States Constitution.

55. Upon information and belief, there exists in the Federal Government a conspiracy or determined plan to deprive the plaintiff of these rights, which conspirance was demonstrated by a course of behavior which was unlawful, unreasonable and contrary to law.

56. Upon information and belief, Federal agents, acting under claim of Federal authority, committed the following acts which were directly violative of and in contravention to the United States Constitution, to wit: the wiring by an electronic or other device of the telephones of plaintiff and/or his attorney and others with whom he has been in telephone contact, without authorization; the surveillance of the plaintiff in derogation of his freedom to associate and to speak and express his opinion; the interference with and cover of plaintiff's mail without proper order.

57. That as a direct result of the unconstitutional acts of federal agents, described more fully in paragraph "56", supra, plaintiff suffered the following damage:
(a) the revocation of plaintiff's authorization to remain in legal non-immigrant status and the issuance of an unwarranted deporation order;
(b) the denial of all applications for discretionary relief, without the required independent understanding of those charged by law to exercise such discretion, such discretion having been unreasonably interfered with by branches of the Federal Government which were not concerned with the lawful administration of the Immigration laws, other than the granting of the one discretionary application which was precipitated by the commencement by plaintiff of an action in the United States District Court to obtain said relief; and
(c) the failure to exercise any discretion whatsoever with respect to the requests for discretionary relief filed by the plaintiff, other than on the one occasion described above.

58. The remedy sought herein, namely the granting of a judicial remedy by a Federal District Court to a plaintiff who is claiming that a constitutionally protected interest has been unreasonably and unwarrantedly invaded and interfered with, is essential and indispensable for the vindication of the plaintiff's conttitutional rights.

WHEREFORE, Plaintiff prays that this Court grant the following relief:

ON THE FIRST CAUSE OF ACTION:

(1) Compel the defendants and those acting with and under said defendants to perform their duty to affirm or deny the occurrence of an illegal act or acts pursuant to Title 18, U.S.C. §3504.

(2) Conduct a hearing pursuant to the aforementioned statute to determine whether and to what extent such unlawful and illegal acts have influenced the determinations made heretofore by defendants with respect to the plaintiff's immigration status, should the defendants admit the existence of any such illegal acts;

(3) Enjoin the defendants and their agents from continuing to hear and rule on the deportation matter, including, but not limited to, enjoining the Board of Immigration Appeals from rendering a decision on the matter until such time as the admissions, denials, and/or hearings sought herein are forthcoming;

ON THE SECOND CAUSE OF ACTION:

(4) Order that a hearing be held on the issues raised therein, and for the specific purpose of determining whether or not the actions of the defendants and their agents, including the institution and determination of deportation proceedings against the plaintiff have been prejudged, and, if after such hearing, it is determined that there has been such prejudgment, order the defendants to discontinue all such proceedings against the plaintiff;

ON THE THIRD CAUSE OF ACTION:

(5) Order that a hearing be held on the issues raised therein, and for the specific purpose of determining whether or not the plaintiff's rights have been violated as alleged therein, and if it is determined, after said hearing, that there has been a substantial violation of the plaintiff's civil or constitutional rights, order the defendants to discontinue all such proceedings against the plaintiff;

(6) Along with such other and further relief as to this Court seems proper under the circumstances.

DATED: NEW YORK, NEW YORK
OCTOBER 23, 1973

Leon Wildes

LEON WILDES
Attorney for Plaintiff
Office and P.O. Address
515 Madison Avenue
New York, N.Y. 10022
(212) 753-3468

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 5-5168

CABLE ADDRESS
"LEONWILDES," N.Y.

August 1, 1973

Immigration and Naturalization Service
20 West Broadway
New York, New York 10007
Attention: Hon. Ira Fieldsteel,
Immigration Judge

Re: LENNON, John Winston Ono
A17 597 321

MOTION TO SECURE AFFIRMANCE OR DENIAL OF OCCURRENCE OF UNLAWFUL ACT

Dear Sir:

It is respectfully moved, pursuant to the provisions of 18 U.S. Code 3504, that the Immigration Judge herein secure, in behalf of the respondent, the affirmance or denial of the occurrence of certain unlawful acts on the part of the government, namely, the illegal use of any electronic, mechanical, or other recording device, wiretap, mail cover, surveillance or other improper investigatory device .

The respondent herein is aggrieved that the proceedings to deport him heretofore instituted by the Immigration and Naturalization Service were unnecessary, illegal and improper; that they may have been instituted as a result of the exploitation of an unlawful act without which he might otherwise have continued in lawful non-immigrant status with the consent and authority of the Immigration and Naturalization Service; that he has thereby been subjected to severe harrassment, mental anguish, and the deprivation of his due process rights in violation of the Constitution and laws of the United States; that the processes for the removal of undesirable aliens may thereby have been abused and/or misapplied for political or other purposes.

This request is separate from and ancillary to the proceedings heretofore had before the Immigration Judge, relates to proceedings heard by the said Immigration Judge and evidence adduced therein, and it is therefore requested that the same Immigration Judge

EXHIBIT A

secure such affirmances or denials as are required by law.

WHEREFORE, respondent respectfully requests that the Immigration Judge direct the government, its agents, officers, and employees, including, but not limited to, such agencies as the Federal Bureau of Investigation, the Central Intelligence Agency, the Immigration and Naturalization Service, the White House "Plumbers Unit", local police authorities, and all other investigatory agencies to affirm or deny in writing whether any unlawful act including the use of any electronic, mechanical, or other device as defined by 18 U.S. Code 2510(5) in violationof the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto, whether relating to the private communications of the respondent, his attorney, or of third parties, has been perpetrated; whether and how such information disclosed by any such unlawful act was communicated so as to precipitate the abrupt and unprecedented denial of temporary stay to the respondent and the precipitous and unwarranted institution of expulsion proceedings, and

WHEREFORE, respondent respectfully requests that the Immigration Judge make all such responses available to the respondent and his counsel and enter an appropriate order thereon granting the respondent such other and further relief as may be just.

Respectfully submitted,

LEON WILDES
Attorney for Respondent
515 Madison Avenue
New York, New York 10022

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
20 WEST BROADWAY
NEW YORK, NEW YORK 10007

September 12, 1973

Mr. Leon Wildes
345 Madison Avenue
New York, N. Y. 10022

Re: JOHN WINSTON ONO LENNON
A17 597 321

Dear Sir:

I have before me your motion of August 1, 1973 requesting certain relief under 18 USC 3504 in the above matter.

Since the subject's case is presently pending on appeal before the Board of Immigration Appeals, it is my view that jurisdiction over your motion rests necessarily with the Board and should be directed to that body.

If I did have jurisdiction over your motion, I would be forced to point out certain defects fatal to the request.

The motion does not appear to have been served on the government trial attorney, Mr. Schiano, and is certainly not one which is amenable to ex parte resolution, nor has the necessary fee been paid.

There is no allegation in the papers that the government has refused to affirm or deny the occurrence of the alleged unlawful act.

Certainly it seems premature to seek judicial intervention in the absence of such refusal. I have taken the liberty of referring a copy of your request to Mr. Schiano for such action as the Service may decide to take on your request.

An examination of § 3504 shows that it is a procedural device associated with the introduction of evidence in the proceeding.

Your motion fails to specify the particular evidence which it is claimed is inadmissible because it is the primary product of an unlawful act. This is particularly important in view of the fact that all of the evidence in the proceedings before me was either offered by you or documentary evidence to which you offered no objection.

Certainly there would seem to be a serious question of laches, in attempting to raise at this time, more than a year after the hearing, objection to the introduction of evidence which should have been made at the hearing.

Very truly yours,

IRA FIELDSTEEL
Immigration Judge

CC: Vincent A. Schiano
Chief Trial Attorney

EXHIBIT B

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 3-3460

CABLE ADDRESS
"LEONWILDES," N. Y.

September 20, 1973

Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Attn: Hon. Ira Fieldsteel, Immigration Judge

RE: JOHN WINSTON ONO LENNON
A17 597 321

Dear Sir:

In connection with my Motion dated August 1, 1973 in the above matter requesting relief under 18 U.S. Code 3504, your ruling dated September 12, 1973 was just received, as it was incorrectly addressed and apparently misdirected. I must differ with you about the proper jurisdiction to rule on this request. As you know, the Board of Immigration Appeals considers itself bound by the administrative record. My reading of the statute leads me to conclude that it is the trial judge or the Federal District Court which are obligated and empowered to require the government to affirm or deny the occurence of illegal acts.

Your letter cites a number of procedural inadequacies in my Motion and avoids ruling definitively with respect to the serious substantive issues raised by the Motion. In order to clarify the procedural matters raised, I wish to state:

(a) A copy of the Motion was served upon the Immigration and Naturalization Service at the same time that service was effected upon

EXHIBIT C

the Immigration Judge. I have also contacted Mr. Vincent A. Schiano, Chief Trial Attorney, and he has declined to affirm or deny the occurrence of any unlawful acts on the part of the government. You may consider this to be the respondent's allegation that the government has refused to affirm or deny the occurrence of the unlawful acts alleged. The matter is ripe for your decision.

(b) It is not necessary under the Statute that respondent point to a specific item of evidence to which he objects. As stated in the Motion, the respondent is aggrieved that the proceedings to deport him were completely unnecessary, illegal and improper, and that he has been subjected to severe harrassment, mental anguish, and the deprivation of his due process rights in violation of the Constitution and the laws of the United States, in that the processes for the removal of undesireable aliens may have been abused and/or misapplied for political or other purposes in his case. His claim is, in the terms of the statute, that the institution of proceedings in his case and <u>all</u> of the evidence adduced therein were either "the primary product of an unlawful act" or "obtained by the exploitation of an unlawful act" and that in the absence of such unlawful act or acts the proceedings against him would never have been instituted at all.

(c) Your letter speaks of laches as though it were a proper defense to the illegal activities of the government. The circumstances and information upon the basis of which earlier suspicions as to the possibility of illegal government activity ripened into belief in the serious probability of such illegal acts, did not occur

until the completion of the proceedings before the Immigration Judge; moreover, since the commission of illegal acts of the nature of those complained of herein effect the vital Constitutional rights, and particularly since the matter is still pending before the Board of Immigration Appeals on administrative review upon the request of the government for an adjournment, no issue of laches should deter a proper substantive determination of this Motion.

I would appreciate your immediate and final ruling upon this Motion, in default of which I shall consider your letter of September 12th and the oral reply of the Chief Trial Attorney to be a final agency determination refusing to obtain the affirmances or denials to which my client is entitled under 18 U.S.C. 3504.

I attach the Motion fee of $25.00

Very truly yours,

LEON WILDES

cc: Vincent A. Schiano
Chief Trial Attorney

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

FROM: Superviser, Intelligence Division, Unit 2.

TO: Regional Director, Group 8.

SUBJECT: THE SUPERVISION OF THE ACTIVITIES OF BOTH JOHN AND YOKO LENNON.

It has come to the futher attention of this office that John Ono Lennon, formely of the Beattles and Yoko Ono Lennon, wife of John Lennon, have intentions of remaining in this country and seeking permenant residence therein, as set forth in a previous communication this has been judged to be inadvisable and it was recommended that all applications are to be denied.

Their relationships with one (6521) Jerry Rubin , and one John Sinclair (4536), also their many committments which are judged to be highly political and unfavorable to the present administration. This was set forth to your office in a previous report. Because of this and their contriversal behaviour, they are to be judged as both undesirable and dangerous aliens.

Because of the delicate and explosive nature of this matter the whole affair has been handed over to the Immigration and Naturilization Service, to handle. Your office is to maintain a constant servaillence of their residence and a periodic report is to be sent this office. All cooperation is to given to the INS and all reports are to be digested by this office.

eco

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WINSTON ONO LENNON, Plaintiff, -against- THE UNITED STATES OF AMERICA; ROBERT H. BORK, as Acting Attorney General of the United States; RICHARD KLIENDIENST, Individually and as former Attorney General of the United States; JOHN A. MITCHELL, Individually and as former Attorney General of the United States; RAYMOND FARRELL, INdividually, and as former Commissioner of Immigration and Naturalization; LEONARD CHAPMAN, Individually, and as Commissioner of Immigration and Naturalization; SOL MARKS, Individually, and as District Director, New York, Immigration and Naturalization; the IMMIGRATION AND NATURALIZATION SERVICE; and PERSONS UNKNOWN IN THE UNITED STATES GOVERNMENT, Defendants.	73 Civ. 4543 OPINION AND ORDER

OWEN, District Judge.

Defendants in this action move for an order dismissing the complaint of plaintiff John Lennon for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P., Rule 12(b)(6) or alternatively

for an order granting them judgment on the pleadings pursuant to Fed. R. Civ. P., Rule 12(c).* The facts pertaining to this action are contained in my earlier opinion, Lennon v. Richardson, 378 F.Supp. 39 (S.D.N.Y. 1974) and need not be repeated here. Since that decision was rendered, the Board of Immigration Appeals ("the Board") dismissed plaintiff's appeal from the order of deportation of Immigration Judge Fieldsteel. In doing so, the Board held (1) that plaintiff was not entitled to a stay of immigration proceedings pending the outcome of the action before me, (2) that the decision to issue an order to show cause in an immigration proceeding is solely within the Immigration and Naturalization Service ("INS") District Director's prosecutorial discretion and as such was unreviewable by it, (3) that the Immigration Judge has the power to enforce the provisions of 18 U.S.C. §3504 in proceedings before him but plaintiff was not entitled to any of the relief he sought thereunder, (4) that no prejudgment claim existed as to the actions of the Immigration Judge since the only denial by the Judge related to statutory ineligibility

*With the consent of both parties this motion has been treated as one for summary judgment under Fed. R. Civ. P., Rule 56, as matters outside the pleadings have been submitted for my consideration.

and other matters of law and not to any discretionary matter, (5) that the Immigration Judge was without jurisdiction to investigate any alleged prejudgment by the District Director or other INS officials or to terminate deportation proceedings as improvidently begun and (6) that plaintiff was shown deportable by clear, convincing and unequivocal evidence under §241(a)(2) of the Immigration & Nationality Act, 8 U.S.C. §1251(a)(2) and was statutorily ineligible for adjustment to permanent resident status under §245 of the Act, 8 U.S.C. §1255 because of a conviction for possession of "cannabis resin" in Great Britain which made him excludable from the United States under §212(a)(23) of the Act, 8 U.S.C. §1182(a)(23).

Plaintiff has appealed the Board's decision to the Court of Appeals, which has yet to hear argument.*

The application to dismiss the first cause of action is granted. That cause of action, pursuant

*It appears that a ruling on the appeal is more than six months away.

to 18 U.S.C. §3504* demands that the government affirm or deny the occurrence of certain unlawful acts as specified in the statute including alleged illegal electronic and mechanical surveillance on plaintiff. In response to plaintiff's demands the Department of Justice has stated in letter form that it has no information indicating that any conversations of plaintiff were overheard or that any premises known to have been owned or leased by plaintiff were covered by electronic surveillance. The letter also denied that Lennon was subjected to electronic surveillance by six other governmental agencies specified in the letter.

Passing the issue of whether this unsworn letter form denial is sufficient to moot plaintiff's claim under 18 U.S.C. §3504, I find that other reasons compel dismissal of this cause of action. The terms of §3504 make clear that it only comes into play upon

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*18 U.S.C. §3504 provides:

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States -

> (1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act; ...

a claim that certain evidence is inadmissible in a proceeding because it is the primary product of an unlawful act or is obtained by the exploitation of such an act. I agree with the Board's conclusion that:

> Counsel has not claimed that any evidence relating to deportability or ineligibility for adjustment of status may have been illegally obtained. In fact, since the evidence in the case consisted solely of the respondent's admitted presence in the United States after February 29, 1972, and the record of his conviction which he readily admitted, we have great difficulty in ascertaining what evidence the respondent may hope to have suppressed.

In re Lennon, A 17 595 321 (BIA, July 10, 1974) at p.7. In any event, and more fundamentally, plaintiff's claim has already been presented both to the Immigration Judge and the Board which have the power and means to fully protect plaintiff's rights under 18 U.S.C. §3504. In re Lennon, supra, at 5-6 and cases cited therein. Any error in the Board's ruling as to this contention is reviewable in the Court of Appeals and not in collateral proceedings in the District Court. §106(a) of the Immigration and Nationality Act, 18 U.S.C. §1105(a). The first cause of action is therefore dismissed.

The second cause of action alleges, in essence, that the District Director, other officials of the INS

and the Immigration Judge "prejudged" all of plaintiff's applications for discretionary relief by routinely denying or not acting upon any such requests, rather than by exercising such discretionary power as is vested in them according to their own understanding and conscience. Principal among the several alleged failures to exercise independent judgment was the institution by the District Director of deportation proceedings against Lennon despite the fact that, absent prejudgment, Lennon would allegedly not have been prosecuted because he would ordinarily have been accorded "non-priority" status.* While plaintiff does not so denominate it, this is essentially an allegation of "selective prosecution" to get the plaintiff out of the country, the reason for which, plaintiff claims, was to penalize him for his association with individuals judged to be highly political and unfavorable to the then-existing administration, as well as to prevent his participation in demonstrations possibly embarrassing to that administration.

*The term "Non-Priority" refers to a category of cases in which the INS will defer the departure of an alien indefinitely and take no action to disturb his immigration status on the ground that such action "would be unconscionable because of the existence of appealing humanitarian factors."

The third cause of action alleges that the conduct alleged in the second cause of action occurred at the behest of high government officials, and was the result of and part of a conspiracy by various government officials to violate plaintiff's rights guaranteed by the First, Fourth, Fifth and Ninth Amendment to the Constitution. Part of the conduct of the alleged conspiracy was to unlawfully wiretap the phones of plaintiff and his attorney and interfere with plaintiff's mail.

The above allegations clearly state valid causes of action. U.S. ex rel Accardi v.Shaughnessy, 347 U.S. 260 (1954); Bufalino v. Kennedy, 322 F.2d 1016 (D.C. Cir. 1963).* Defendants argue that the decision to institute immigration proceedings on the basis of a non-priority classification or for any other reason is a matter that rests entirely in the discretion of the District Director and is unreviewable in any Court or administration proceeding, citing Spata v. Immigration and Naturalization Service, 442 F.2d 1013 (2d Cir.), cert.denied, 404 U.S. 857 (1971); and Riva v. Immigration and Naturalization Service, Civil No. 74-1601 (D.N.J. October 20, 1974). As I view it, these cases hold no more than that the District Court lacks jurisdiction to

*Defendants attempted distinction of these cases is unpersuasive. Even assuming, as the Board has held, that the Immigration Judge never denied any discretionary applications, the same cannot be said as to the actions of the District Director and the INS.

review the judgment of the District Director in a bona fide exercise of his discretion in deciding to institute a deportation proceeding even if he acted arbitrarily, capriciously or irrationally in so doing. These cases do not, and, in my view, could not hold that a government official can with impunity, immune from judicial review, institute a deportation proceeding solely as a penalty for the lawful exercise of constitutional rights. As stated by the Court of Appeals for the Second Circuit in U.S. v. Berrios, ____F.2d____. (Slip Op. at 5155, August 8, 1974):

> Nothing can corrode respect for a rule of law more than the knowledge that the government looks beyond the law itself to arbitrary considerations, such as race, religion, or control over the defendant's exercise of his constitutional rights, as the basis for determining its applicability. See Oyler v. Boles, 368 U.S. 448, 456 (1962). Selective prosecution then can become a weapon used to discipline political foe and the dissident, see, e.g., United States v. Falk, 479 F.2d 616 (7th Cir. 1973); United States v. Steele, 461 F.2d 1148 (9th Cir. 1972). The prosecutor's objective is then diverted from the public interest to the punishment of those harboring beliefs with which the administration in power may disagree.

I note that plaintiff's claim is normally asserted as a defense in the prosecution alleged to have been selectively instituted.* However, it is the Board's holding in this very case that it and the Immigration Judge have no jurisdiction to consider claims

*See, e.g., U.S. v. Berrios, supra; U.S. v. Berrigan, 482 F.2d 171 (3rd Cir.1973).

of prejudgment or selective prosecution by the District Director or INS.

Thus, while reaching the conclusion that plaintiff may assert a selective prosecution defense to a deportation proceeding in a complaint in a collateral civil action in the District Court, I question plaintiff's right to have uncontrolled access to the full panoply of discovery normally available pursuant to the Federal Rules of Civil Procedure. I deem it inappropriate for a potential deportee, by the mere assertion of such a claim, to subject the government to a highly disruptive burden of justification in each such case. Counsel for Lennon did not contend otherwise on the argument hereof, and conceded that there must be an adequate preliminary factual showing of possible selective prosecution to justify the commencement of discovery. And for similar reasons, even assuming a factual showing justifying some inquiry has been made, the potential deportee is still not entitled in my opinion to a wholly unfettered discovery. I therefore conclude that in this situation the Court is under a duty to retain control over the discovery process to ensure that there is no unjustified and improper intrusion into the prosecutorial decision-making process. See United States v. Berrios, supra, United States v. Berrigan, supra.

Since on the present state of the record there are adumbrated sufficient facts to justify at least a limited inquiry, the parties shall appear before me on January 9, 1975 at 4:30 p.m. to establish the extent of discovery to be initially allowed. Until that time the pending stay of discovery is continued.

On the basis of the foregoing, defendants' motion to dismiss for failure to state a claim is granted as to the first cause of action, and is denied as to the second and third causes of action.

Defendants' motion for summary judgment is denied without prejudice, plaintiff having engaged in little discovery as yet.

SO ORDERED:

Richard Owen
United States District Judge

January 2, 1975.

Rehabilitation of Offenders Act 1974

CHAPTER 53

ARRANGEMENT OF SECTIONS

Section

1. Rehabilitated persons and spent convictions.
2. Rehabilitation of persons dealt with in service disciplinary proceedings.
3. Special provision with respect to certain disposals by children's hearings under the Social Work (Scotland) Act 1968.
4. Effect of rehabilitation.
5. Rehabilitation periods for particular sentences.
6. The rehabilitation period applicable to a conviction.
7. Limitations on rehabilitation under this Act, etc.
8. Defamation actions.
9. Unauthorized disclosure of spent convictions.
10. Orders.
11. Citation, commencement and extent.

ELIZABETH II

Rehabilitation of Offenders Act 1974

1974 CHAPTER 53

An Act to rehabilitate offenders who have not been reconvicted of any serious offence for periods of years, to penalise the unauthorised disclosure of their previous convictions, to amend the law of defamation, and for purposes connected therewith.

[31st July 1974]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Rehabilitated persons and spent convictions

1.—(1) Subject to subsection (2) below, where an individual has been convicted, whether before or after the commencement of this Act, of any offence or offences, and the following conditions are satisfied, that is to say—

(*a*) he did not have imposed on him in respect of that conviction a sentence which is excluded from rehabilitation under this Act; and

(*b*) he has not had imposed on him in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction in accordance with section 6 below a sentence which is excluded from rehabilitation under this Act;

then, after the end of the rehabilitation period so applicable (including, where appropriate, any extension under section 6(4) below of the period originally applicable to the first-

mentioned conviction) or, where that rehabilitation period ended before the commencement of this Act, after the commencement of this Act, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the first-mentioned conviction and that conviction shall for those purposes be treated as spent.

(2) A person shall not become a rehabilitated person for the purposes of this Act in respect of a conviction unless he has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction; but the following shall not, by virtue of this subsection, prevent a person from becoming a rehabilitated person for those purposes—

(*a*) failure to pay a fine or other sum adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognizance or of a bond of caution to keep the peace or be of good behaviour;

(*b*) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence (whether or not, in any case, he is in fact so dealt with);

(*c*) failure to comply with any requirement of a suspended sentence supervision order.

(3) In this Act "sentence" includes any order made by a court in dealing with a person in respect of his conviction of any offence or offences, other than—

(*a*) an order for committal or any other order made in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction, or for want of sufficient distress to satisfy any such fine or other sum;

(*b*) an order dealing with a person in respect of a suspended sentence of imprisonment.

(4) In this Act, references to a conviction, however expressed, include references—

(*a*) to a conviction by or before a court outside Great Britain; and

(*b*) to any finding (other than a finding linked with a finding of insanity) in any criminal proceedings or in care proceedings under section 1 of the Children and Young Persons Act 1969 that a person has committed an offence or done the act or made the omission charged;

1969 c. 54.

and notwithstanding anything in section 9 of the Criminal Justice (Scotland) Act 1949 or section 13 of the Powers of Criminal Courts Act 1973 (conviction of a person put on probation or discharged to be deemed not to be a conviction) a conviction in respect of which an order is made placing the person convicted on probation or discharging him absolutely or conditionally shall be treated as a conviction for the purposes of this Act and the person in question may become a rehabilitated person in respect of that conviction and the conviction a spent conviction for those purposes accordingly. 1949 c. 94. 1973 c. 62.

Rehabilitation of persons dealt with in service disciplinary proceedings.

2.—(1) Subject to the following provisions of this section, for the purposes of this Act any finding that a person is guilty of an offence in respect of any act or omission which was the subject of service disciplinary proceedings shall be treated as a conviction and any punishment awarded in respect of any such finding shall be treated as a sentence.

(2) Subsection (1) above applies only where either or both of the following conditions is satisfied, that is to say—

(*a*) the offence in question is an offence to which this subsection applies; or

(*b*) the punishment awarded is a punishment to which this subsection applies.

(3) Subsection (2) above applies to any offence consisting in the commission of a civil offence and to any offence under, and any offence of attempting to commit an offence under, any of the following enactments, or any corresponding enactment previously in force—

(*a*) sections 30, 45, 46, 61, 62, 64 and 66 of the Army Act 1955 and the Air Force Act 1955; and 1955 c. 18. 1955 c. 19.

(*b*) sections 5, 30, 31, 34A, 35, 36 and 37 of the Naval Discipline Act 1957. 1957 c. 53.

(4) Subsection (2) above applies to the following punishments—

(*a*) imprisonment;

(*b*) cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service;

(*c*) dismissal from Her Majesty's service; and

(*d*) detention for a term of three months or more.

(5) In this Act, "service disciplinary proceedings" means any of the following—

(*a*) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 whether before a court-martial or before any other

court or person authorised thereunder to award a punishment in respect of any offence);

(*b*) any proceedings under any Act previously in force corresponding to any of the Acts mentioned in paragraph (*a*) above;

(*c*) any proceedings under any corresponding enactment or law applying to a force, other than a home force, to which section 4 of the Visiting Forces (British Commonwealth) Act 1933 applies or applied at the time of the proceedings, being proceedings in respect of a member of a home force who is or was at that time attached to the first-mentioned force under that section;

1933 c. 6.

whether in any event those proceedings take place in Great Britain or elsewhere.

Special provision with respect to certain disposals by children's hearings under the Social Work (Scotland) Act 1968. 1968 c. 49.

3. Where a ground for the referral of a child's case to a children's hearing under the Social Work (Scotland) Act 1968 is that mentioned in section 32(2)(g) of that Act (commission by the child of an offence) and that ground has either been accepted by the child and, where necessary, by his parent or been established to the satisfaction of the sheriff under section 42 of that Act, the acceptance or establishment of that ground shall be treated for the purposes of this Act (but not otherwise) as a conviction, and any disposal of the case thereafter by a children's hearing shall be treated for those purposes as a sentence; and references in this Act to a person's being charged with or prosecuted for an offence shall be construed accordingly.

Effect of rehabilitation.

4.—(1) Subject to sections 7 and 8 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—

(*a*) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Great Britain to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and

(*b*) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered

without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

(2) Subject to the provisions of any order made under subsection (4) below, where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—

(*a*) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and

(*b*) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.

(3) Subject to the provisions of any order made under subsection (4) below,—

(*a*) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's); and

(*b*) a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.

(4) The Secretary of State may by order—

(*a*) make such provision as seems to him appropriate for excluding or modifying the application of either or both of paragraphs (*a*) and (*b*) of subsection (2) above in relation to questions put in such circumstances as may be specified in the order;

(*b*) provide for such exceptions from the provisions of subsection (3) above as seem to him appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the order.

(5) For the purposes of this section and section 7 below any of the following are circumstances ancillary to a conviction, that is to say—

(*a*) the offence or offences which were the subject of that conviction;

(*b*) the conduct constituting that offence or those offences; and

(*c*) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.

(6) For the purposes of this section and section 7 below "proceedings before a judicial authority" includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power—

(*a*) by virtue of any enactment, law, custom or practice;

(*b*) under the rules governing any association, institution, profession, occupation or employment; or

(*c*) under any provision of an agreement providing for arbitration with respect to questions arising thereunder;

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

Rehabilitation periods for particular sentences.

5.—(1) The sentences excluded from rehabilitation under this Act are—

(*a*) a sentence of imprisonment for life;

(*b*) a sentence of imprisonment or corrective training for a term exceeding thirty months;

(*c*) a sentence of preventive detention; and

(*d*) a sentence of detention during Her Majesty's pleasure or for life, or for a term exceeding thirty months, passed under section 53 of the Children and Young Persons Act 1933 or under section 57 of the Children and Young Persons (Scotland) Act 1937 (young offenders convicted of grave crimes);

1933 c. 12.
1937 c. 37.

and any other sentence is a sentence subject to rehabilitation under this Act.

(2) For the purposes of this Act—

(*a*) the rehabilitation period applicable to a sentence specified in the first column of Table A below is the period specified in the second column of that Table in relation to that sentence, or, where the sentence was imposed on a person who was under seventeen years of age at the date of his conviction, half that period; and

(*b*) the rehabilitation period applicable to a sentence specified in the first column of Table B below is the period specified in the second column of that Table in relation to that sentence;

reckoned in either case from the date of the conviction in respect of which the sentence was imposed.

TABLE A

Rehabilitation periods subject to reduction by half for persons under 17

Sentence	*Rehabilitation period*
A sentence of imprisonment or corrective training for a term exceeding six months but not exceeding thirty months.	Ten years
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service	Ten years
A sentence of imprisonment for a term not exceeding six months.	Seven years
A sentence of dismissal from Her Majesty's service.	Seven years
Any sentence of detention in respect of a conviction in service disciplinary proceedings.	Five years
A fine or any other sentence subject to rehabilitation under this Act, not being a sentence to which Table B below or any of subsections (3) to (8) below applies.	Five years

TABLE B

Rehabilitation periods for certain sentences confined to young offenders

Sentence	*Rehabilitation period*
A sentence of Borstal training.	Seven years
A sentence of detention for a term exceeding six months but not exceeding thirty months passed under section 53 of the said Act of 1933 or under section 57 of the said Act of 1937.	Five years
A sentence of detention for a term not exceeding six months passed under either of those provisions.	Three years
An order for detention in a detention centre made under section 4 of the Criminal Justice Act 1961 or under section 7 of the Criminal Justice (Scotland) Act 1963.	Three years

1961 c. 39.
1963 c. 39.

(3) The rehabilitation period applicable—

(*a*) to an order discharging a person absolutely for an offence; and

(*b*) to the discharge by a children's hearing under section 43(2) of the Social Work (Scotland) Act 1968 of the referral of a child's case;

1968 c. 49.

shall be six months from the date of conviction.

(4) Where in respect of a conviction a person was conditionally discharged, bound over to keep the peace or be of good behaviour, or placed on probation, the rehabilitation period applicable to the sentence shall be one year from the date of conviction or a period beginning with that date and ending when the order for conditional discharge or probation order or (as the case may be) the recognizance or bond of caution to keep the peace or be of good behaviour ceases or ceased to have effect, whichever is the longer.

(5) Where in respect of a conviction any of the following sentences was imposed, that is to say—

(*a*) an order under section 57 of the Children and Young Persons Act 1933 or section 61 of the Children and Young Persons (Scotland) Act 1937 committing the person convicted to the care of a fit person;

1933 c. 12.
1937 c. 37.

(*b*) a supervision order under any provision of either of those Acts or of the Children and Young Persons Act 1963;

1963 c. 37.

(*c*) an order under section 58 or 58A of the said Act of 1937 committing the person convicted to custody in a remand home or to detention in a place chosen by a local authority, or (as the case may be) committing him for a period of residential training;

(*d*) an approved school order under section 61 of the said Act of 1937;

(*e*) a care order or a supervision order under any provision of the Children and Young Persons Act 1969; or

1969 c. 54.

(*f*) a supervision requirement under any provision of the Social Work (Scotland) Act 1968;

the rehabilitation period applicable to the sentence shall be one year from the date of conviction or a period beginning with that date and ending when the order or requirement ceases or ceased to have effect, whichever is the longer.

(6) Where in respect of a conviction any of the following orders was made, that is to say—

(*a*) an order under section 54 of the said Act of 1933 committing the person convicted to custody in a remand home;

(*b*) an approved school order under section 57 of the said Act of 1933; or

(*c*) an attendance centre order under section 19 of the Criminal Justice Act 1948; 1948 c. 58.

the rehabilitation period applicable to the sentence shall be a period beginning with the date of conviction and ending one year after the date on which the order ceases or ceased to have effect.

(7) Where in respect of a conviction a hospital order under Part V of the Mental Health Act 1959 or under Part V of the Mental Health (Scotland) Act 1960 (with or without an order restricting discharge) was made, the rehabilitation period applicable to the sentence shall be the period of five years from the date of conviction or a period beginning with that date and ending two years after the date on which the hospital order ceases or ceased to have effect, whichever is the longer. 1959 c. 72. 1960 c. 61.

(8) Where in respect of a conviction an order was made imposing on the person convicted any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to the sentence shall be a period beginning with the date of conviction and ending on the date on which the disqualification, disability, prohibition or penalty (as the case may be) ceases or ceased to have effect.

(9) For the purposes of this section—

(*a*) "sentence of imprisonment" includes a sentence of detention in a young offenders institution in Scotland and a sentence of penal servitude, and "term of imprisonment" shall be construed accordingly;

(*b*) consecutive terms of imprisonment or of detention under section 53 of the said Act of 1933 or section 57 of the said Act of 1937, and terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) shall be treated as a single term;

(*c*) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed; and

(*d*) a sentence imposed by a court outside Great Britain shall be treated as a sentence of that one of the descriptions mentioned in this section which most nearly corresponds to the sentence imposed.

(10) References in this section to the period during which a probation order, or a care order or supervision order under the

1969 c. 54. 1968 c. 49.

Children and Young Persons Act 1969, or a supervision requirement under the Social Work (Scotland) Act 1968, is or was in force include references to any period during which any order or requirement to which this subsection applies, being an order or requirement made or imposed directly or indirectly in substitution for the first-mentioned order or requirement, is or was in force.

This subsection applies—

(*a*) to any such order or requirement as is mentioned above in this subsection;

(*b*) to any order having effect under section 25(2) of the said Act of 1969 as if it were a training school order in Northern Ireland; and

(*c*) to any supervision order made under section 72(2) of the said Act of 1968 and having effect as a supervision order under the Children and Young Persons Act (Northern Ireland) 1950.

1950 c. 5. (N.I.).

(11) The Secretary of State may by order—

(*a*) substitute different periods or terms for any of the periods or terms mentioned in subsections (1) to (8) above; and

(*b*) substitute a different age for the age mentioned in subsection (2)(*a*) above.

The rehabilitation period applicable to a conviction.

6.—(1) Where only one sentence is imposed in respect of a conviction (not being a sentence excluded from rehabilitation under this Act) the rehabilitation period applicable to the conviction is, subject to the following provisions of this section, the period applicable to the sentence in accordance with section 5 above.

(2) Where more than one sentence is imposed in respect of a conviction (whether or not in the same proceedings) and none of the sentences imposed is excluded from rehabilitation under this Act, then, subject to the following provisions of this section, if the periods applicable to those sentences in accordance with section 5 above differ, the rehabilitation period applicable to the conviction shall be the longer or the longest (as the case may be) of those periods.

(3) Without prejudice to subsection (2) above, where in respect of a conviction a person was conditionally discharged or placed on probation and after the end of the rehabilitation period applicable to the conviction in accordance with subsection (1) or (2) above he is dealt with, in consequence of a breach of conditional discharge or probation, for the offence for which the order for conditional discharge or probation order was made, then, if the rehabilitation period applicable to the conviction in

accordance with subsection (2) above (taking into account any sentence imposed when he is so dealt with) ends later than the rehabilitation period previously applicable to the conviction, he shall be treated for the purposes of this Act as not having become a rehabilitated person in respect of that conviction, and the conviction shall for those purposes be treated as not having become spent, in relation to any period falling before the end of the new rehabilitation period.

(4) Subject to subsection (5) below, where during the rehabilitation period applicable to a conviction—

(*a*) the person convicted is convicted of a further offence; and

(*b*) no sentence excluded from rehabilitation under this Act is imposed on him in respect of the later conviction;

if the rehabilitation period applicable in accordance with this section to either of the convictions would end earlier than the period so applicable in relation to the other, the rehabilitation period which would (apart from this subsection) end the earlier shall be extended so as to end at the same time as the other rehabilitation period.

(5) Where the rehabilitation period applicable to a conviction is the rehabilitation period applicable in accordance with section 5(8) above to an order imposing on a person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to another conviction shall not by virtue of subsection (4) above be extended by reference to that period; but if any other sentence is imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed by any other provision of section 5 above, the rehabilitation period applicable to another conviction shall, where appropriate, be extended under subsection (4) above by reference to the rehabilitation period applicable in accordance with that section to that sentence or, where more than one such sentence is imposed, by reference to the longer or longest of the periods so applicable to those sentences, as if the period in question were the rehabilitation period applicable to the first-mentioned conviction.

(6) Subject to subsection (7) below, for the purposes of subsection (4)(*a*) above there shall be disregarded—

(*a*) any conviction in England and Wales of an offence which is not triable on indictment;

(*b*) any conviction in Scotland of an offence which is not excluded from the jurisdiction of inferior courts of summary jurisdiction by virtue of section 4 of the Summary Jurisdiction (Scotland) Act 1954 (certain crimes not to be tried in inferior courts of summary jurisdiction); and 1954 c. 48.

(*c*) any conviction by or before a court outside Great Britain of an offence in respect of conduct which, if it had taken place in any part of Great Britain, would not have constituted an offence under the law in force in that part of Great Britain.

(7) Notwithstanding subsection (6) above, a conviction in service disciplinary proceedings shall not be disregarded for the purposes of subsection (4)(*a*) above.

Limitations on rehabilitation under this Act, etc.

7.—(1) Nothing in section 4(1) above shall affect—

(*a*) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence;

(*b*) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;

(*c*) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction; or

(*d*) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 6 above to the conviction.

(2) Nothing in section 4(1) above shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto—

(*a*) in any criminal proceedings before a court in Great Britain (including any appeal or reference in a criminal matter);

(*b*) in any service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;

(*c*) in any proceedings relating to adoption or to the guardianship, wardship, marriage, custody, care or control of, or access to, any minor, or to the provision by any person of accommodation, care or schooling for minors;

1969 c. 54.

(*d*) in any care proceedings under section 1 of the Children and Young Persons Act 1969 or on appeal from any such proceedings, or in any proceedings relating to

the variation or discharge of a care order or supervision order under that Act;

(*e*) in any proceedings before a children's hearing under the Social Work (Scotland) Act 1968 or on appeal from any such hearing; or 1968 c. 49.

(*f*) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 4(1).

In the application of this subsection to Scotland, "minor" means a child under the age of eighteen, including a pupil child.

(3) If at any stage in any proceedings before a judicial authority in Great Britain (not being proceedings to which, by virtue of any of paragraphs (*a*) to (*e*) of subsection (2) above or of any order for the time being in force under subsection (4) below, section 4(1) above has no application, or proceedings to which section 8 below applies) the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

(4) The Secretary of State may by order exclude the application of section 4(1) above in relation to any proceedings specified in the order (other than proceedings to which section 8 below applies) to such extent and for such purposes as may be so specified.

(5) No order made by a court with respect to any person otherwise than on a conviction shall be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of any offence.

Defamation actions.

8.—(1) This section applies to any action for libel or slander begun after the commencement of this Act by a rehabilitated person and founded upon the publication of any matter imputing that the plaintiff has committed or been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.

(2) Nothing in section 4(1) above shall affect an action to which this section applies where the publication complained of took place before the conviction in question became spent, and the following provisions of this section shall not apply in any such case.

(3) Subject to subsections (5) and (6) below, nothing in section 4(1) above shall prevent the defendant in an action to which this section applies from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him, or restrict the matters he may establish in support of any such defence.

(4) Without prejudice to the generality of subsection (3) above, where in any such action malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 4(1) above shall restrict the matters he may establish in rebuttal of the allegation.

(5) A defendant in any such action shall not by virtue of subsection (3) above be entitled to rely upon the defence of justification if the publication is proved to have been made with malice.

(6) Subject to subsection (7) below a defendant in any such action shall not, by virtue of subsection (3) above, be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing (whether under section 3 of the Law of Libel Amendment Act 1888 or otherwise) the defence that the matter published constituted a fair and accurate report of judicial proceedings if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of section 4(1) above.

1888 c. 64.

(7) Subsection (3) above shall apply without the qualifications imposed by subsection (6) above in relation to—

(*a*) any report of judical proceedings contained in any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, and

(*b*) any report or account of judicial proceedings published for bona fide educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

(8) In the application of this section to Scotland—

(*a*) for the reference in subsection (1) to libel and slander there shall be substituted a reference to defamation;

(*b*) for references to the plaintiff and the defendant there shall be substituted respectively references to the pursuer and the defender; and

(c) for references to the defence of justification there shall be substituted references to the defence of veritas.

Unauthorized disclosure of spent convictions.

9.—(1) In this section—

"official record" means a record kept for the purposes of its functions by any court, police force, Government department, local or other public authority in Great Britain, or a record kept, in Great Britain or elsewhere, for the purposes of any of Her Majesty's forces, being in either case a record containing information about persons convicted of offences; and

"specified information" means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction.

(2) Subject to the provisions of any order made under subsection (5) below, any person who, in the course of his official duties, has or at any time has had custody of or access to any official record or the information contained therein, shall be guilty of an offence if, knowing or having reasonable cause to suspect that any specified information he has obtained in the course of those duties is specified information, he discloses it, otherwise than in the course of those duties, to another person.

(3) In any proceedings for an offence under subsection (2) above it shall be a defence for the defendant (or, in Scotland, the accused person) to show that the disclosure was made—

(*a*) to the rehabilitated person or to another person at the express request of the rehabilitated person; or

(*b*) to a person whom he reasonably believed to be the rehabilitated person or to another person at the express request of a person whom he reasonably believed to be the rehabilitated person.

(4) Any person who obtains any specified information from any official record by means of any fraud, dishonesty or bribe shall be guilty of an offence.

(5) The Secretary of State may by order make such provision as appears to him to be appropriate for excepting the disclosure of specified information derived from an official record from the provisions of subsection (2) above in such cases or classes of case as may be specified in the order.

(6) Any person guilty of an offence under subsection (2) above shall be liable on summary conviction to a fine not exceeding £200.

(7) Any person guilty of an offence under subsection (4) above shall be liable on summary conviction to a fine not exceeding £400 or to imprisonment for a term not exceeding six months, or to both.

(8) Proceedings for an offence under subsection (2) above shall not, in England and Wales, be instituted except by or on behalf of the Director of Public Prosecutions.

Orders.

10.—(1) Any power of the Secretary of State to make an order under any provision of this Act shall be exercisable by statutory instrument, and an order made under any provision of this Act except section 11 below may be varied or revoked by a subsequent order made under that provision.

(2) No order shall be made by the Secretary of State under any provision of this Act other than section 11 below unless a draft of it has been laid before, and approved by resolution of, each House of Parliament.

Citation, commencement and extent.

11.—(1) This Act may be cited as the Rehabilitation of Offenders Act 1974.

(2) This Act shall come into force on 1st July 1975 or such earlier day as the Secretary of State may by order appoint.

(3) This Act shall not apply to Northern Ireland.

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Paul J Curran
UNITED STATES ATTORNEY
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